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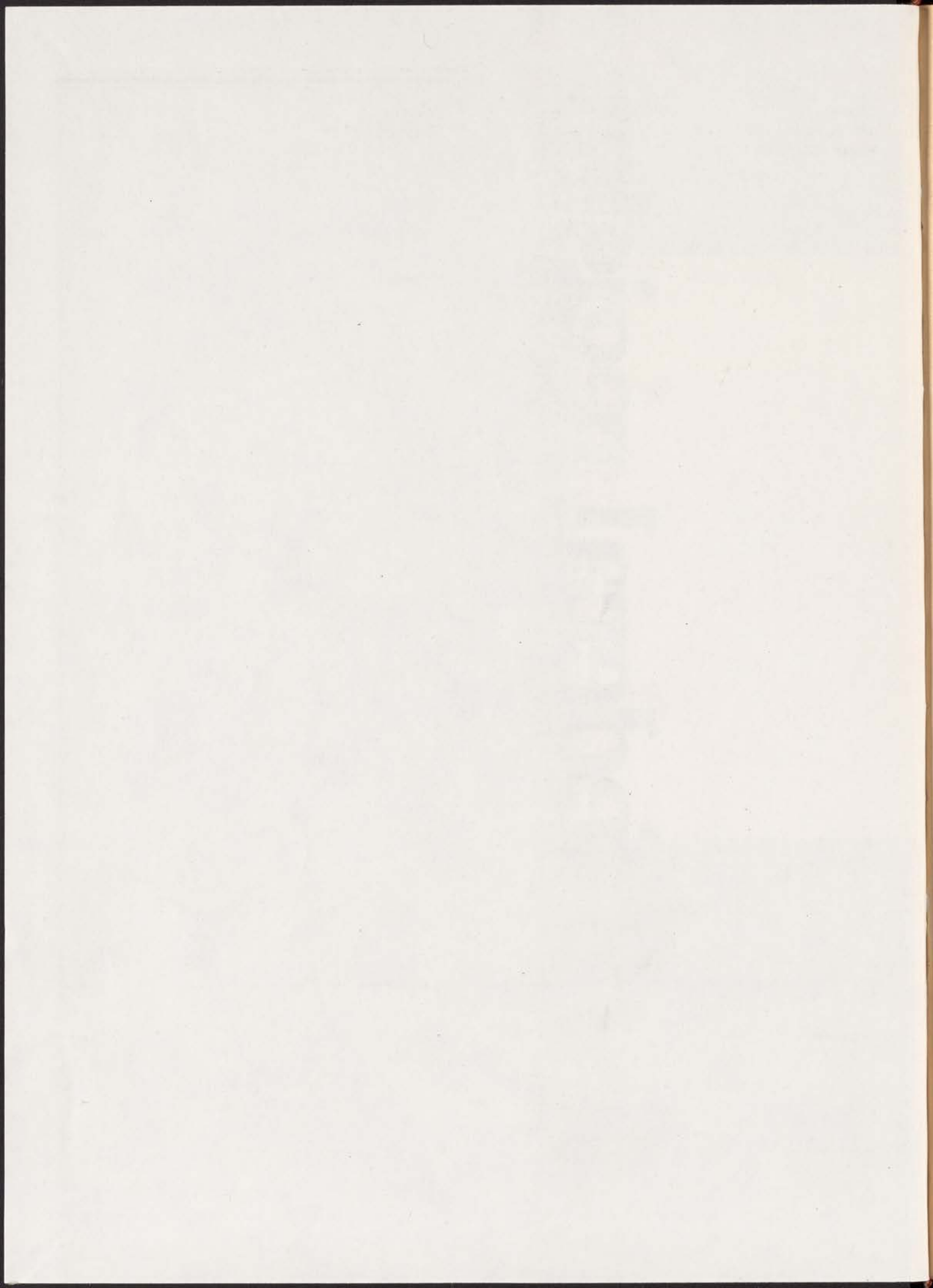
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program: Addition of Snack or Meal

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule implements a nondiscretionary provision of the Hunger Prevention Act of 1988, Pub. L. 100-435, required to be implemented on July 1, 1989. That provision increases by one the number of reimbursable meals or supplements available under the Child Care Food Program (CCFP) to eligible children maintained in child care centers for eight or more hours per day. This rulemaking also includes a single, discretionary recordkeeping provision to be imposed upon centers which claim this additional reimbursement.

DATES: This interim rule is effective July 1, 1989. To be assured of consideration, comments must be postmarked on or before August 25, 1989.

ADDRESS: Comments should be addressed to: Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m.-5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION: Classification

This action has been reviewed under Executive Order 12291 and has been classified not major because it will not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, or Federal, State or local government agencies; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Acting Administrator of the Food and Nutrition Service (FNS) has certified that this interim rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this rule have been approved by the Office of Management and Budget under clearance 0584-0055.

This rule implements Section 211 of Pub. L. 100-435, a nondiscretionary provision which provides for CCFP reimbursement for an additional meal or snack served to children who are provided care by participating centers for more than eight hours per day. Included in this rule is a single discretionary recordkeeping provision which is necessary for the implementation of the nondiscretionary time requirement of the provision. The effective date for this provision is July 1, 1989. Pub. L. 100-435 also required the Department to conduct a demonstration project in one State in order to assess the impact of providing reimbursement for an additional meal or snack in centers and homes. The State of Minnesota was chosen as the demonstration site and began providing this additional reimbursement in December 1988. Given the July 1 implementation date and the desirability of doing at least a preliminary assessment of the demonstration project, the Department believed it to be in the best interest of CCFP administrators to publish this rule after preliminary results from the

demonstration were available and, at the same time, to give States and institutions adequate time to prepare for implementation. For these reasons, the Acting Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that it is unnecessary and contrary to public interest to take prior public comment and that good cause therefore exists for publishing this rule without prior public notice and comment. For the same reasons, the Acting Administrator has determined that good cause exists for making this rule effective without a 30 day post-publication waiting period. Furthermore, because of the nondiscretionary, interpretive nature of this rule (except for the time recordkeeping requirement), the Acting Administrator has determined that prior notice and comment is unnecessary and a 30-day post-publication waiting period is not required in accordance with 5 U.S.C. 553(b)(3)(A) and 553(d)(2). However, because the Department believes that this rule may be improved through public comment, comments are solicited on this rule for 60 days. All comments received will be analyzed and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Background

Pub. L. 100-435, the Hunger Prevention Act of 1988, was enacted on September 19, 1988. Section 211 of that law amended Section 17(f)(2)(B) of the National School Lunch Act (42 U.S.C. 1766(f)(2)(B)) to allow reimbursement for a snack or meal served to eligible children in child care centers in addition to the reimbursement currently available for two meals and one snack under the CCFP. Specifically, the amendment made by Pub. L. 100-435 makes reimbursement available for " * * two meals and two supplements or three meals and one supplement per day per child * * " It limits the additional reimbursement to meals or supplements served to " * * children

that are maintained in a child care setting for eight or more hours per day * * * It further limits the reimbursement to centers, specifically excluding family day care homes. Finally, Section 701(b)(4) of Pub. L. 100-435 requires that the additional reimbursement provision be effective and implemented on July 1, 1989.

Except for certain restrictions covering the times of meal service in outside-school-hours care centers (§ 226.19(b)(7)) and a requirement that participating institutions keep daily records indicating the number of children in attendance (§ 226.15(e)(4)), current law and regulations governing the CCFP are silent with respect to meal service times and recordkeeping related to the times in which children are in attendance or served meals. However, given the specific time requirement established in Pub. L. 100-435, the Department believes it necessary, for the purpose of implementing the nondiscretionary parts of this rule, to require that centers claiming reimbursement for the additional meal or supplement maintain documentation that the participant to whom they serve the additional meal or supplement was in attendance at the center for eight or more hours on the day for which the meal was claimed. Under the Minnesota demonstration project, this documentation consisted of time-in/time-out records for each child in attendance for whom an extra meal or supplement was claimed. This rule incorporates the time-in/time-out requirement but applies it to all children in attendance regardless of whether they receive a reimbursable extra meal or supplement. The Department believes that extending this requirement to all children in attendance is essential to proper recordkeeping to support this extra reimbursement and more easily and accurately accommodates such things as unexpected changes in times in attendance by individual children. This documentation should, at a minimum, include a time-in/time-out form which shows the number of hours each child was in attendance at the center. This interim rule contains such a requirement. The Department is interested in receiving public comment on this provision and will issue a final rule on this aspect of the rule after consideration of those comments.

Under this rule, outside-school-hours care centers now may be approved to serve an extra meal or snack, but only under the conditions described in the revision of § 226.19(b)(4) and the time constraints established in the newly designated § 226.19(b)(6) (existing

§ 226.19(b)(7)). Given these restrictions, the Department expects that the service of an additional meal or snack will occur only when school is not in session or when the center provides lunches to children who are unable to obtain a lunch at school.

Certain adult day care centers are now eligible for participation in the CCFP. However, the Department believes, since Pub. L. 100-435 authorizes the extra meal or snack each day * * * per child, for children that are maintained in a child care setting * * *, the intent of Congress was that this provision apply only to children in child care centers and not to adults in adult day care centers. Adult day care centers had been authorized for CCFP participation for a year at the time that Public Law 100-435 was enacted. Had Congress wanted to extend the provision to adults, it would have been so stated in the law.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.15:

- a. Paragraph (e)(5) through (e)(11) are redesignated (e)(6) through (e)(12); and
- b. A new paragraph (e)(5) is added, to read as follows:

§ 226.15 Institution provisions.

* * *

(e) * * *

(5) For child care centers and outside school-hours care centers claiming reimbursement for more than two meals and one supplement per child per day, documentation of the total time-in-attendance for each child at the center for each day for which the extra meal or supplement was claimed. Such information shall include a time-in/time-out form which records time-in-attendance for each child at the center.

§ 226.17 [Amended]

* * *

3. In § 226.17, the second sentence of paragraph (b)(3) is amended by adding before the period the phrase ", except that reimbursement may be claimed for

two meals and two supplements or three meals and one supplement served to a child for each day in which that child is maintained in care for eight or more hours".

§ 226.19 [Amended]

4. In § 226.19:

- a. Paragraph (b)(4) is revised;
- b. Paragraph (b)(5) is removed;
- c. Paragraphs (b)(6) through (b)(10) are redesignated (b)(5) through (b)(9); and
- d. The second sentence of newly redesignated paragraph (b)(5) is amended by adding before the period the phrase ", except that reimbursement may be claimed for two meals and two supplements or three meals and one supplement served to a child for each day in which that child is maintained in care for eight or more hours". The revision specified above reads as follows:

§ 226.19 Outside-school-hours care center provisions.

* * *

(b) * * *

(4) Outside-school-hours care centers shall be eligible to serve a breakfast, supplement and supper to enrolled children outside of school hours. In addition, outside-school-hours care centers shall be eligible to serve a lunch to enrolled children during periods of school vacation, including weekends and holidays, and to enrolled children attending schools which do not offer a lunch program. Notwithstanding the eligibility of outside-school-hours care centers to serve Program meals to children on school vacation, including holidays and weekends, such centers shall not operate under the Program on weekends only.

* * *

Date: June 21, 1989.

George A. Braley,

Acting Administrator.

[FR Doc. 89-15075, Filed 6-21-89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 671]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 671 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at

385,000 cartons during the period June 25 through July 1, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 671 (§ 910.971) is effective for the period June 25 through July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative

Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on June 20, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is revised as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.971 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.971 Lemon Regulation 671.

The quantity of lemons grown in California and Arizona which may be handled during the period June 25, 1989, through July 1, 1989, is established at 385,000 cartons.

Dated: June 21, 1989.

Charles R. Brader,
Director, Fruit and Vegetable Division.
[FR Doc. 89-15076 Filed 6-22-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 985

[FV-88-023FR]

Spearmint Oil Produced in the Far West; Revision of Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oils for the 1988-89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification as a final rule the provisions of an interim final rule which increased the quantities of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1988-89 marketing year which began June 1, 1988. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, the agency responsible for local administration of the order.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 170 producers hold "Class 1" oil (Scotch) allotment base and 136 producers hold "Class 3" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of Far West Spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), at its January 26 and March 6, 1989, meetings, unanimously recommended that the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1988-89 marketing year be increased. The 1988-89 salable quantities and allotment percentages for those classes of oil were first published in a final rule in the March 1, 1988, issue of the *Federal Register* (53 FR 6129). Subsequently, an interim final rule increasing the salable quantity and allotment percentage for Scotch spearmint oil for the 1988-89 marketing year was published in the August 18, 1988, issue of the *Federal Register* (53 FR 31281), inviting comments until September 19, 1988. That interim final rule increased the 1988-89 salable quantity for Scotch spearmint oil from 650,131 to 766,387 pounds and the allotment percentage from 39 to 46 percent.

An interim final rule, modifying the August 18, 1988, interim final rule by increasing the salable quantity of Scotch spearmint oil from 776,387 to 883,011 pounds and increasing the allotment percentage from 46 to 53 percent, was published in the September 30, 1988, issue of the *Federal Register* (53 FR 38281). In addition, that interim final rule increased the salable quantity of Native

spearmint oil from 701,077 to 791,772 pounds and increased the allotment percentage from 38 to 43 percent. The increases in the September 30, 1988, interim final rule were adopted without modification in a final rule published in the January 11, 1989, issue of the *Federal Register* (54 FR 962). Those revisions were issued pursuant to § 985.52(a) of the spearmint oil marketing order.

A new interim final rule modifying the January 11, 1989, final rule by increasing the salable quantity of Scotch spearmint oil from 883,011 to 966,314 pounds and increasing the allotment percentage from 53 to 58 percent was published in the April 4, 1989, issue of the *Federal Register* (54 FR 13513). In addition, that interim final rule increased the salable quantity of Native spearmint oil from 791,772 to 966,698 pounds and increased the allotment percentage from 43 to 52.5 percent. Those revisions were also pursuant to § 985.52(a) of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

Scotch Spearmint Oil

At its August 12, 1987, meeting, the Committee estimated trade demand for Scotch spearmint oil for the 1988-89 marketing year to be 761,063 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 761,063 pounds. The Committee estimated that 15,703 pounds would be carried in on June 1, 1988. This amount was deducted from the total supply needed leaving 745,360 pounds as the salable quantity needed. This figure was further reduced by 100,000 pounds which was the amount of Far West Scotch sales estimated to be filled by production from outside the production area (South Dakota). This left a salable quantity needed of 645,360 pounds. This quantity, divided by the total of all allotment bases of 1,667,002 pounds, resulted in 38.7 percent, which was the computed allotment percentage. This figure was adjusted to 39 percent and established as the 1988-89 Scotch allotment percentage which resulted in a 1988-89 salable quantity of 650,131 pounds.

At the time of the July 6, 1988, Committee meeting, the 1988-89 salable percentage of 39 percent, when applied

to the then current total allotment base of 1,666,059 pounds, gave a 1988-89 salable quantity of 649,763 pounds. Since all growers either produced their individual salable quantity or filled any deficiencies with reserve pool oil, the total salable quantity which was available, when this figure was combined with the actual carry-in on June 1, 1988, was 683,644 pounds, and was the total supply available for the 1988-89 marketing year. Carry-in on June 1, 1988, was 33,881 pounds of Scotch oil, higher than the Committee had estimated.

The Committee, at its July 6, 1988, meeting, recommended increasing the salable percentage of Scotch spearmint oil by 7 percent, from 39 to 46 percent, thus making an additional 116,624 pounds available to the market. The basis for this recommendation was that when these additional pounds were added to the total supply available of 683,644 pounds, the resulting 800,268 pounds was between the five-year average sales of 758,682 pounds and the highest year of sales of 868,242 pounds. The Committee decided that this figure would meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988-89 Scotch salable percentage be increased from 39 to 46 percent resulting in an increase in the salable quantity from 650,101 to 766,387 pounds. This figure added to the June 1, 1988, carry-in of 33,881 pounds resulted in a total available supply of 800,268 pounds. Thus, the interim final rule published in the August 18, 1988, issue of the *Federal Register* [53 FR 31281] increased the salable quantity for Scotch spearmint oil from 650,101 to 766,387 pounds and increased the allotment percentage from 39 to 46 percent.

Estimates at the time of the July 6, 1988, Committee meeting indicated that a maximum of 50 percent of a normal crop would be harvested in the Midwest during the 1988-89 marketing year. The demand for Far West Scotch oil increased as buyers of Midwest Scotch oil substituted Far West oil for Midwest oil. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil were therefore required.

At its August 10, 1988, meeting, the Committee unanimously voted to make more Scotch spearmint oil available to the market by increasing the salable quantity and allotment percentage. The Committee therefore recommended that the 1988-89 Scotch salable percentage

be increased from 46 to 53 percent resulting in an increase in the salable quantity from 766,387 to 883,011 pounds. This figure, added to the June 1, 1988, carry-in of 33,881 pounds, resulted in a total available supply of 916,892 pounds. Thus, the interim final rule published in the September 30, 1988, issue of the *Federal Register* (53 FR 38281) and adopted in the final rule published in the January 11, 1989, issue of the *Federal Register* (54 FR 962), increased the salable quantity for Scotch spearmint oil from 766,387 to 883,011 pounds and increased the allotment percentage from 46 to 53 percent.

At its January 26, 1989, meeting, the Committee unanimously voted to make more Scotch spearmint oil available to the market by further increasing the salable quantity and allotment percentage. Total sales as of January 26, 1989, were the highest on record. Both buyer and grower input indicated that there would likely be 30,000 to 40,000 pounds of additional demand over the next several months. When the estimated amount that had been sold as of January 26, 1989, (888,653 pounds) was deducted from the total supply available of 916,892 pounds, the

resulting 28,239 pounds was considered by the Committee to be less than desirable for that time in the marketing year. The Committee therefore recommended that the 1988-89 Scotch spearmint oil salable percentage be increased from 53 to 58 percent, resulting in an increase in the salable quantity from 883,011 to 966,314 pounds with only 932,255 pounds made available. The following table summarizes the computations used in arriving at the Committee's recommendations:

	Pounds			
	Recommendation Aug. 12, 1987	Recommendation July 6, 1988	Recommendation Aug. 10, 1988	Recommendation Jan. 26, 1989
(1) Carry-in.....	15,703	33,881	33,881	33,881
(2) Total supply available.....	665,834	800,268	916,892	³ 966,136
(3) Desirable carryout.....	0	0	0	0
(4) Salable quantity.....	¹ 645,360	² 766,387	² 883,011	966,314
(5) Total allotment bases for Scotch oil.....	1,667,002	1,666,059	1,666,059	1,666,059
(6) Allotment percentage.....	39	46	53	58
(7) Adjusted salable quantity.....	650,101	766,387	883,011	² 932,255

¹ Salable quantity equals trade demand minus carry-in and minus any additional 100,000 pounds of Scotch oil expected to be available from South Dakota, which is outside the production area.

² Total supply available minus carrying.

³ Although 5 percent of the total 1988-89 allotment base figure of 1,666,059 pounds results in a figure of 83,303 pounds, the action taken makes only 49,244 pounds available. This number is adjusted because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

Thus, the Department determined an allotment percentage of 58 percent should be established for Scotch spearmint oil for the 1988-89 marketing year. This percentage made available 966,136 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil. Although 5 percent of the total 1988-89 allotment base figure of 1,666,059 pounds resulted in a figure of 83,303, pounds, the increase in the 1988-89 Scotch spearmint oil salable percentage from 53 to 58 percent made only 49,244 pounds available. This is because some growers do not have reserve pool oil and, therefore, were not able to fill the deficiency created by this increase with their own oil. Because the deadline for filling another grower's deficiency was October 31, 1988, the additional allotment made available to growers without pool oil will not be available to market. Therefore, a certain amount of the additional allotment resulting from this increase cannot be used to make additional oil available to market.

Native Spearmint Oil

In addition, at its August 12, 1987, meeting, the Committee estimated trade demand for Native spearmint oil for the 1988-89 marketing year to be 750,000 pounds. A desirable carry-out figure of 0

pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 750,000 pounds. The Committee estimated that 50,000 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 700,000 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,844,940 pounds, resulted in 37.9 percent which was the computed allotment percentage. This figure was adjusted to 38 percent and established as the 1988-89 Native allotment percentage which resulted in a 1988-89 salable quantity of 701,077 pounds based on the estimated total base of 1,844,940 pounds.

The 1988-89 salable percentage of 38 percent, when applied to the revised total allotment base of 1,841,330 pounds, gave a 1988-89 salable quantity of 699,705 pounds. Since all growers either produced their individual salable quantity or filled deficiencies with reserve pool oil, the total salable quantity made available, when this figure was combined with the actual carry-in on June 1, 1988, was 703,107 pounds, and was the total supply available for the 1988-89 marketing year.

Carry-in on June 1, 1988, was 3,402 pounds of Native oil, which was lower than the Committee had estimated.

Extensive surveys of growers and buyers led the Committee at its August 10, 1988 meeting to estimate that 610,479 pounds of the 1988-89 total available supply was committed to the market. This was the highest amount that had ever been sold or committed to be sold at that time of the year. When the estimated amount that was committed to the market of 610,479 pounds was deducted from the total supply available of 703,107 pounds, the result of 92,628 pounds was the amount available to the market. This was considered by the Committee to be less than was desirable for that early in the marketing year. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Native oil were required. The Committee recommended increasing the salable percentage by 5 percent, from 38 to 43 percent, thus making an additional 92,067 pounds ($0.05 \times 1,841,330$ pounds) which was the then current total of allotment bases for Native oil) available to the market. The Committee decided that this figure would meet immediate needs while assuring growers that a burdensome supply would not be put on

the market. The Committee therefore recommended that the 1988-89 Native salable percentage be increased from 38 to 43 percent resulting in an increase in the salable quantity from 699,705 to 791,772 pounds. This figure added to the June 1, 1988, carry-in of 3,402 pounds resulted in a total available supply of 795,173 pounds. Thus, the interim final rule published in the September 30, 1988, issue of the *Federal Register* (53 FR 38281) and adopted in the final rule published in the January 11, 1989, issue of the *Federal Register* (54 FR 962), increased the salable quantity for Native spearmint oil from 701,077 to 791,772 pounds and increased the allotment percentage from 38 to 43 percent.

At its January 26, 1989 meeting, the Committee unanimously voted to make more Native spearmint oil available to the market by further increasing the salable quantity and allotment percentage. When the total estimated sales at that time of 766,249 pounds was

deducted from the total supply available of 795,173 pounds, the resulting 28,924 pounds was the estimated amount available to the market. This was considered by the Committee to be less than is desirable for that time in the marketing year. The Committee therefore recommended that the 1988-89 Native spearmint oil salable percentage be increased from 43 to 49 percent, resulting in an increase in the salable quantity from 791,772 to 893,416 pounds. Although 6 percent of the total 1988-89 allotment base figure of 1,841,330 pounds resulted in a figure of 110,480 pounds, the action taken made only 101,644 pounds available. This was because some growers did not have reserve pool oil, and therefore were not able to fill the increased salable quantity with their own oil.

At its March 6, 1989 meeting, the Committee unanimously voted to revise its January 26, 1989, recommendation. Market activity shortly after the January 26 meeting was unexpectedly brisk and

resulted in a depletion of the bulk of the available Native spearmint oil. By March 6, the total amount of sales and Native spearmint oil committed to be sold was estimated to be 856,817 pounds.

When the total sales of 856,817 pounds was deducted from the total supply available of 896,817 pounds, the resulting 40,000 pounds was the amount estimated to be available to the market. This was considered by the Committee to be less than is desirable for this time in the marketing year. The Committee therefore revised its January 26 recommendation and recommended that the 1988-89 Native spearmint oil salable percentage be further increased from 49 to 52.5 percent resulting in an increase in the salable quantity from 893,415 to 966,698 pounds with only 951,314 pounds being made available.

The following table summarizes the computations used in arriving at the Committee's recommendations.

	Pounds			
	Recommendation Aug. 12, 1987	Recommendation Aug. 10, 1988	Recommendation Jan. 26, 1989	Revised recommendation Mar. 6, 1989
(1) Carry-in.....	50,000	3,402	3,402	3,402
(2) Quantity available.....	750,000	795,174	¹ 896,817	² 954,716
(3) Desirable carryout.....	0	0	0	0
(4) Salable quantity.....	700,000	791,772	902,252	966,698
(5) Total allotment base for Native.....	1,844,940	1,841,330	1,841,330	1,841,330
(6) Allotment percentage.....	38	43	49	52.5
(7) Adjusted salable quantity.....	701,077	791,772	¹ 893,415	² 951,314

¹ Although 6 percent of the total 1988-89 allotment base figure of 1,842,330 pounds results in a figure of 110,480 pounds, the action taken makes only 101,644 pounds available. This is because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

² Although the additional 3.5 percent of the total 1988-89 allotment base figure of 1,841,330 pounds results in a figure of 64,447 pounds, the action taken makes only 57,898 pounds available. This is because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

Thus, the Department determined an allotment percentage of 52.5 percent should be established for Native spearmint oil for the 1988-89 marketing year. This percentage made available 954,716 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil. Although the additional 3.5 percent of the 1988-89 allotment base figure of 1,841,330 pounds resulted in a figure of 64,447 pounds, the action taken made only 57,898 pounds available. This is because some growers did not have reserve pool oil and, therefore, were not able to fill the deficiency created by this increase with their own oil.

An interim final rule establishing those allotment percentages and salable quantities for Scotch and Native spearmint oils was issued on March 30, 1989, and published in the *Federal Register* on April 4, 1989 (54 FR 13513). Comments were solicited from

interested persons through May 4, 1989. No comments were received. Thus, the allotment percentages and salable quantities as established by that interim final rate are adopted without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 1, 1988, issue of the *Federal Register* (53 FR 6129); the interim final rule published in the August 18, 1988, issue of the *Federal Register* (53 FR 31281); the interim final rule published in the September 30, 1988, issue of the *Federal Register* (53 FR 38281); the final rule published in the January 11, 1989, issue of the *Federal Register* (54 FR 962),

and the interim final rule published in the April 4, 1989, issue of the *Federal Register* (54 FR 13513), the Committee's recommendations and other information, it is found that to amend § 985.208 (53 FR 6129) so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils, as set forth below, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register*. This action adopts as a final rule, without change, the provisions of the interim final rule. No comments were received concerning the interim final rule and no practical purpose would be served by postponing the effective date of this action.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

Note: This section will not appear in the Code of Federal Regulations.

**PART 985—MARKETING ORDER
REGULATING THE HANDLING OF
SPEARMINT OIL PRODUCED IN THE
FAR WEST**

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule revising § 985.208, which was published at 54 FR 13513 on April 4, 1989, is adopted as a final rule without change.

Dated: June 21, 1989.

Robert C. Keeney,
*Deputy Director, Fruit and Vegetable
Division.*

[FR Doc. 89–15025 Filed 6–23–89; 8:45 am]
BILLING CODE 3410–02–M

**Animal and Plant Health Inspection
Service**

9 CFR Part 91

[Docket No. 89–027]

**Ports Designated for Exportation of
Animals**

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by adding Olympia, Washington, to the list of ports designated as ports of embarkation and by adding the Port of Olympia Facility as the export inspection facility for that port. The facility meets the requirements of the regulations to be included in the list of export inspection facilities. The effect of this action is to add an additional port through which animals may be exported.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT:
Dr. N.Q. Faizi, Senior Staff Veterinarian,
Import-Export Animals Staff, VS,
APHIS, USDA, Room 762, Federal
Building, 6505 Belcrest Road,
Hyattsville, MD 20782; (301) 436–8383.

**SUPPLEMENTARY INFORMATION:
Background**

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States.

On January 31, 1989, we published in the *Federal Register* (54 FR 4832–4833, Docket No. 88–188) a document proposing to amend the regulations by adding Olympia, Washington, to the list of ports designated as ports of embarkation and by adding the Port of Olympia Facility as the export inspection facility for that port.

We solicited comments on the proposal for 60 days, to be postmarked or received on or before April 3, 1989. We received one comment, from a member of a county humane society. The commenter asserted that the Port of Olympia does not have facilities for holding, feeding, and watering animals prior to exportation. The agency has inspected the export inspection facility for the Port of Olympia and reviewed the facility's procedures for handling animals. Based on this information, the agency has determined that the export inspection facility for the Port of Olympia does have adequate facilities for holding, feeding, and watering animals and meets the requirements set forth in § 91.14(c) of the regulations. The commenter also asserted that the facility would not be accessible to the public on weekends and holidays. Since the facility covers only livestock and certain zoo species, prior arrangements between exporters and the facility operator would be made for each shipment. Thus, the facility would maintain a flexible schedule that would meet the needs of the exporters. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal without change as a final rule.

**Executive Order 12291 and Regulatory
Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the

ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There will be minimal economic effect because there are only about 6 ocean shipments a year out of the Northwest United States. This rule only affects owners exporting animals through the port of Seattle, Washington, or the port at Portland, Oregon, by giving these exporters another port from which to ship their animals.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

**PART 91—INSPECTION AND
HANDLING OF LIVESTOCK FOR
EXPORTATION**

Accordingly, 9 CFR Part 91 is amended as follows:

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 91.14 is amended by adding new paragraphs (a)(15)(iii) and (a)(15)(iii)(A) to read as follows:

**§ 91.14 Ports of embarkation and export
inspection facilities.**

(a) * * *

(15) *Washington.* * * *

(iii) Olympia—ocean port.

(A) Port of Olympia Animal Export Facility, 915 Washington Street NE., Olympia, Washington 98507–0827, (206) 586–6150.

* * * * *

Done in Washington, DC., this 20th day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15020 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD22

Manner of Service of Pleadings Upon the Secretary of the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule makes minor changes in the Commission's rules of practice by requiring that all parties in NRC proceedings file copies of all pleadings filed with any agency adjudicatory tribunal with the Office of the Secretary in the same or equivalent manner in which they were filed with the tribunal. This will result in the Office of the Secretary receiving the pleading on approximately the same day as the tribunal.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Charles E. Mullins, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-1606.

SUPPLEMENTARY INFORMATION: The Commission has discovered that in individual proceedings before its various Atomic Safety and Licensing Boards, Atomic Safety and Licensing Appeal Boards, and Administrative Law Judges, some motions and pleadings addressed to those tribunals are served on (delivered to) those tribunals in a more expeditious manner than they are served on the Secretary of the Commission. For instance, the tribunals sometimes receive filings by telecopier or telefax, by express mail, or by hand delivery, while the Secretary's service copies of the same documents are sent by first-class (regular) mail. As a result, the Office of the Secretary, which is responsible for maintaining the official docket of all adjudicatory proceedings as well as the Public Document Room, often does not receive these filings until several days after they have been received by the parties and the tribunals. Under these circumstances, it is difficult for the Office of the Secretary to maintain the official agency docket in

a timely fashion. See 10 CFR 1.25 and 2.702.

This addition to the Commission's rules of practice requires that parties serve the Office of the Secretary in the same or equivalent manner that they serve the tribunal before which the proceeding is being conducted. For example, if a party serves the tribunal by express or overnight mail, it should also serve the Secretary by express or overnight mail so that the Secretary will receive the pleading at approximately the same time as the tribunal and the other parties to the proceeding. Likewise, parties could serve the tribunal by hand while serving the Secretary by telecopier or telefax. Again, this equivalent service will ensure that the Secretary will receive copies of the pleadings at approximately the same time as the tribunal and the other parties to the proceeding. This change will allow the Secretary to maintain the official dockets in close harmony and synchronization with the actual progress of the tribunal's proceedings.

The rule makes an exception for those proceedings being held outside the Washington, DC, area when the adjudicatory tribunal is physically present in such a location. In those cases, the rule allows parties who serve the tribunal and the opposing parties by personal service to serve the Secretary by overnight mail. The rule also provides that service of pre-filed testimony and demonstrative evidence (such as maps and exhibits) on the Secretary may be accomplished by normal mail in all cases.

Because this amendment relates solely to matters of agency practice, good cause exists for omitting notice of proposed rulemaking and public procedures thereon as unnecessary.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no new or amended information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The Commission and its Secretary have a demonstrated need for receiving

copies of filings in NRC adjudications in a more timely fashion. This rule change which requires service upon the Secretary of filings by the same or equivalent method that they are served upon the adjudicatory tribunal is the only means available to achieve this end.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 2:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1248 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42

U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Paragraphs (d), (e), and (f) of § 2.712 are redesignated paragraphs (e), (f), and (g), respectively and new paragraph (d) is added to § 2.712 to read as follows:

§ 2.712 Service of papers, methods, proof.

(d) *Service on the Secretary.* (1) All pleadings must be served on the Secretary of the Commission in the same or equivalent manner, i.e., telefax, express mail, personal delivery, or courier, that they are served upon the adjudicatory tribunals and the parties to the proceedings so that the Secretary will receive the pleading at approximately the same time that it is received by the tribunal to which the pleading is directed.

(2) When pleadings are personally delivered to tribunals while they are conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished by overnight mail.

(3) Service of pre-filed testimony and demonstrative evidence (e.g., maps and other physical exhibits) on the Secretary may be made by first-class mail in all cases.

(4) The addresses for the Secretary are:

(i) First class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(ii) Express mail: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

(iii) Telecopier: (301) 492-1672 (3M); (301) 492-0275 (DEX); and (301) 492-1777 (Verification).

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland, this 15th day of June, 1989.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89-15032 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 89-62]

Consolidation of Tampa, St. Petersburg, and Port Manatee, FL, for Marine Purposes

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document consolidates the ports of entry of Tampa, St. Petersburg, and Port Manatee, Florida, for marine purposes only. This change will enable Customs to obtain more efficient use of its personnel, facilities, and resources, without impairing services to area businesses or the general public. Moreover, it will simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control, (202-566-9425).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by notice published in the *Federal Register* on December 12, 1988 (53 FR 49892), it was proposed to consolidate the ports of entry of Tampa, St. Petersburg, and Port Manatee, Florida, for marine purposes only. The change would enable Customs to obtain more efficient use of its personnel, facilities and resources. Because of the close proximity of the respective ports of entry in the Tampa Bay area, and similar services performed, it was estimated that the proposed consolidation would significantly reduce costs without impairing Customs ability to provide services to area businesses and to the general public.

Under the proposal, each of the ports, Tampa, St. Petersburg, and Port Manatee, would retain its port code and geographic limits. Although each port would retain its identity, the three ports would be designated as a consolidated port in Tampa Bay for purposes of vessel arrival, and entry and clearance laws, which would benefit all the ports. In order to avoid obtaining necessary

permits for each port visited, the original vessel's entry documentation would describe the ports which the vessel intended to visit and the cargo to be unladen at each location. Further, the three ports would be considered to be one port for the purposes of the navigation laws. However, all the requirements prescribed by the navigation laws administered and enforced by Customs would have to be complied with, as is now the case in existing consolidated ports.

It is anticipated that the consolidation will also result in reducing penalties incurred under the navigation laws if carriers fail to enter and properly clear merchandise being shipped in a residue cargo movement within the consolidated marine port, and will reduce paperwork for carriers, importers and Customs. No comments were received in response to the notice proposing this change. Accordingly, after further review of the matter, Customs has determined that it is in the public interest to adopt the change as proposed.

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Similarly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. The list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended as follows:

In the Southeast Region-Miami, Fla., under the column headed "Name and headquarters," the following phrase

would be added under the listing "Tampa, Fla.":

(The ports of Tampa, St. Petersburg, and Port Manatee, consolidated for purposes of the navigation laws. See T.D. 89-62.)

Michael H. Lane,

Acting Commissioner of Customs.

Approved: June 20, 1989.

Salvatore R. Martocchio,

Assistant Secretary of the Treasury.

[FR Doc. 89-15029 Filed 6-23-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Maduramycin Ammonium with Chlortetracycline

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. The application provides for use of currently approved maduramycin ammonium 1 percent Type A medicated articles and chlortetracycline 50 grams per pound granular Type A articles to make combination drug Type C medicated feeds. The feeds are for the prevention of coccidiosis and reduction of mortality due to susceptible *Escherichia coli* infections in broiler chickens.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 140-837 which provides for combining Cygro® (maduramycin ammonium) 1 percent Type A medicated articles with Aureomycin® (chlortetracycline) 50 grams per pound granular Type A articles to make Type C medicated broiler feeds. The Type C medicated feeds are for the prevention of coccidiosis caused by *Eimeria acervulina*, *E. tenella*, *E. brunetti*, *E. maxima*, *E. necatrix*, and *E. mivati*, and as an aid in the reduction of mortality due to susceptible *E. coli* infections. The NADA is approved and 21 CFR 558.128

and 558.340 are amended to reflect the approval.

These are new animal drugs used in Type A medicated articles to make Type C medicated feeds. Maduramycin ammonium is a Category II drug and chlortetracycline is a Category I drug. Therefore, as provided in 21 CFR 558.4(e), an approved FDA 1900 is required for making a Type C medicated feed containing the combination of maduramycin ammonium and chlortetracycline as in the approved subject NADA and in the regulation herein added to 21 CFR 558.340.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.128 is amended by adding new paragraph (c)(5)(xiii) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(c) * * *

(5) * * *

(xiii) Maduramycin ammonium as in § 558.340.

3. Section 558.340 is amended in paragraph (c) by redesignating paragraphs (c) (2) and (3) as paragraphs (c)(1) (i) and (ii) and adding new paragraph (c)(2) to read as follows:

§ 558.340 Maduramycin ammonium.

* * * * *

(c) * * *

(2) Amount. 4.54 to 5.45 grams per ton (5 to 6 parts per million) with chlortetracycline 500 grams per ton.

(i) *Indications for use.* For prevention of coccidiosis caused by *Eimeria acervulina*, *E. tenella*, *E. brunetti*, *E. maxima*, *E. necatrix*, and *E. mivati*; as an aid in the reduction of mortality due to *Escherichia coli* infections susceptible to such treatment.

(ii) *Limitations.* For broiler chickens only. Use for no more than 5 days. Do not feed to laying hens. Withdraw 5 days before slaughter.

Dated: June 19, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-14994 Filed 6-23-89; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Fees for Processing FOIA Requests and Predisclosure Notification for Business Records

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: This rule establishes sections on fees and predisclosure notification, law enforcement records, and details on how the Agency will implement the Freedom of Information Act (FOIA) exemptions. This rule is to conform to the amendments enacted by the Freedom of Information Reform Act of 1986 concerning law enforcement records and fees for processing requests and to Executive Order No. 12600 concerning predisclosure notification for business records. The Freedom of Information Reform Act of 1986 amended the FOIA by modifying the terms of Exemption 7 and by supplying new provisions relating to the charging and waiving of fees. Executive Order No. 12600 established procedures for notifying submitters of business records when the agency is considering release of those records in response to a FOIA request.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, Freedom of Information Officer, (202) 485-7499.

SUPPLEMENTARY INFORMATION: The United States Information Agency published a proposed rule on the fee

schedule and fee waiver regulations on February 10, 1989, and solicited comments. No comments were received by the March 13 deadline. Therefore, this rule will supercede that proposed rule in order to update the fee schedule and fee waiver requirements of the Freedom of Information Act, 5 U.S.C. 552(a)(4)(A)(i), et seq., to comply with the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) and OMB Administrative Guidelines published in the Federal Register on March 17, 1987, Volume 52, No. 59, pages 10012-10020 and in conjunction with the New Fee Waiver Policy Guidance issued by the U.S. Department of Justice, Office of Legal Policy issued on April 2, 1987, Executive Order No. 12600 concerning Predisclosure Notification Procedures for Confidential Commercial Information was published in the Federal Register, Vol. 52, No. 122, pages 23781-23783 on June 25, 1987.

The Director has determined that this regulation is not a major rule within the meaning of E.O. 12291 because it will not have an effect on the economy of \$100 million or more or otherwise meet the threshold criteria. Therefore, the preparation of a regulatory impact analysis is not required.

The Director certifies that this regulation will not have a significant economic impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

This regulation does not require use of a form, nor does it otherwise involve a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

List of Subjects in 22 CFR Part 503

Freedom of information.

For the reasons set out in the preamble, 22 CFR Part 503 is amended to read as follows:

PART 503—[AMENDED]

1. The authority citation for Part 503 continues to read as follows:

Authority: 22 U.S.C. 2658; 31 U.S.C. 483a; 5 U.S.C. 301; 5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1561; E.O. 10477, as amended, 18 FR 4540, 3 CFR 1949-1953 Comp., page 958, at 22 U.S.C.A. 811a; E.O. 11652, 37 FR 5209, 3 CFR (1974), page 339.

2. Sections 503.7 and 503.8 are revised to read as follows:

§ 503.7 Fees.

(a) *Fees to be charged—categories of requests.* The paragraphs below state, for each category of request, the type of fees that we will generally charge. However, for each of these categories,

the fees may be limited, waived, or reduced for the reasons given in paragraph (e) of this section. "Request" means asking for records, whether or not you refer specifically to the Freedom of Information Act. Requests from Federal agencies and court orders for documents are not included within this definition. "Review" means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include the process of researching or resolving general legal or policy issues regarding exemptions. "Search" means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document.

(1) *Commercial use request.* If your request is for a commercial use, USIA will charge you the costs of search, review and duplication. "Commercial use" means that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put; the identity of the requester (individual, non-profit corporation, for-profit corporation), or the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, a purpose of use supporting the requester's news dissemination function is not a commercial use.

(2) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, USIA will charge you only for the duplication of documents. Also, USIA will not charge you the copying costs for the first 100 pages of duplication. "Educational institution" means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education.

"Non-commercial scientific institution" means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry. "Representative of the news media" means a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public. News media entities include television and radio broadcasters, publishers of periodicals (to the extent they publish "news") who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

(3) *Other requesters.* If your request is not the kind described by paragraph (a)(1) of this section or paragraph (a)(2) of this section, then USIA will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

(b) *Fees to be charged—general provisions.* (1) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(2) We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. We have estimated that cost to be \$5.00.

(3) If we determine that you are (acting alone or with others) breaking down a single request into a series of requests in order to avoid or reduce the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

(4) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. The accrual of interest will be stayed upon receipt of the fee, rather than upon its processing by USIA. Interest will be at the rate prescribed in section 3717 of Title 32 U.S.C.

(c) *Fee Schedule—USIA will charge the following fees:* (1) Manual searching

for or reviewing of records: (i) When performed by employees at grade GS-1 through GS-8 or FS-9 through FS-6—an hourly rate of \$10.00 will be charged;

(ii) When performed by employees at grade GS-9 through GS-13 or FS-5 through FS-2—an hourly rate of \$20.00 will be charged;

(iii) When performed by employees at grade GS-14 or above or FS-2 or above—an hourly rate of \$36.00 will be charged.

(iv) When a search involves employees at more than one of these levels, we will charge the appropriate rate for each.

(2) Computer searching and printing. The actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(3) Photocopying standard size pages—\$0.15 per page.

(4) Photocopying odd-size documents (such as punchcards or blueprints) or reproducing other records (such as tapes)—the actual cost of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(5) Certifying that records are true copies—this service is not required by the FOIA. If we agree to provide it, we will charge \$10.00 per certification.

(6) Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual cost.

(7) Performing any other special service that you request and to which we agree—actual cost of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (c)(1) of this section.

(d) *Procedures for assessing and collecting fees.* (1) Agreement to pay. We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(2) Advance payment. If you have failed to pay previous bills in a timely manner, or if our initial review of your request indicates that we will charge you fees exceeding \$250.00, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want, or before we send them to you. In such cases, the administrative time limits as described in Section

503.6(b) above, will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

(e) *Waiver or reduction of fees.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests (paragraphs (e)(1) and (e)(2) of this section): (1) It is in the public interest because it is likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In making this determination, we may consider:

(i) Whether the requester is in a position to contribute to public understanding;

(ii) Whether the requester has such knowledge or expertise as may be necessary to understand the information; and,

(iii) Whether the requester's intended use of the information would be likely to disseminate the information among the public, and

(2) It is not primarily in the commercial interest of the requester. Commercial interests include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests; so do nonprofit corporations, individuals, unions, and other associations.

(3) You must make your request for a waiver or reduction at the same time you make your request for records. Only the FOL Officer may make the decision whether to waive or reduce the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate the appeal official.

§ 503.8 Exemptions.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. These exemptions and their application by the Agency are described below. In some cases, more than one exemption may apply to the same document. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Agency.

(a) *Exemption one—National defense and foreign policy.* We are not required to release records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. Executive Order No. 12356 (1982) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult

with officials of those area offices and/or with officials of the Department of State. We may also have in our possession records classified by another agency. If we do, we may consult with that agency or may refer your request to that agency for their direct response to you, in which case we will notify you that we have made such a referral.

(b) *Exemption two—Internal personnel rules and practices.* We are not required to release records that are related solely to the internal personnel rules and practices of an agency. We may withhold routine internal agency procedures such as guard schedules and luncheon periods. We may also withhold internal records the release of which would help some persons circumvent the law or agency regulations.

(c) *Exemption three—Records exempted by other statutes.* We are not required to release records if another statute specifically allows us to withhold them. Another statute may be used only if it absolutely prohibits disclosure or if it sets forth criteria identifying particular types of material to be withheld.

(d) *Exemption four—Trade secrets and confidential commercial or financial information.* We will withhold trade secrets and commercial or financial information that is obtained from a person and privileged or confidential.

(1) *Trade secrets.* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. A direct relationship is necessary between the trade secret and the productive process.

(2) *Commercial or financial information, obtained from a person, and is privileged or confidential.*

(i) Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances).

(ii) Information is obtained from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, state or foreign government, or other organization. Information is not "obtained from a person" if it is generated by USIA or another Federal agency.

(iii) Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege, or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the Government, unless the providing of the information to the Government rendered the information no longer protectible in civil discovery.

(iv) Information is "confidential" if it meets one of the following tests:

(A) Disclosure may impair the Government's ability to obtain necessary information in the future;

(B) Disclosure would substantially harm the competitive position of the person who submitted the information;

(C) Disclosure would impair other Government interests, such as program effectiveness and compliance; or

(D) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

(3) *Designation of certain confidential information.* A person who submits records to the Government may designate part or all of the information in such records as exempt from disclosure under Exemption four. The person may make this designation either at the time the records are submitted to the Government or within a reasonable time thereafter. The designation must be in writing. The legend prescribed by a request for proposal or request for quotations pursuant to any agency regulation establishing a substitute for the language is sufficient but not necessary for this purpose. Any such designation will expire ten years after the records were submitted to the Government.

(4) *Predisclosure notification.* The procedures in this paragraph apply to records that were submitted to the Government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption four. Certain exceptions to these procedures are stated in paragraph (d)(5) of this section.

(i) When we receive a request for such records and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters

are reasonably likely to become aware of it.

(ii) The submitter has five (5) working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(iii) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records and the submitter still does not agree, we will send a written notice to the submitter stating briefly why we did not sustain its objections and will provide a copy of the records as we intend to release them. The notice will state that we will disclose the records five (5) working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(iv) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(v) Whenever we send a notice to a submitter under paragraph (d)(4)(i) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object.

(5) *Exceptions to predisclosure notification.* The notice requirements in paragraph (d)(4) of this section do not apply in the following situations:

(i) We decide not to disclose the records;

(ii) The information has previously been published or made generally available;

(iii) We have already notified the submitter of previous requests for the same records and have come to an understanding with that submitter about the records;

(iv) Disclosure is required by a statute other than the FOIA;

(v) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the FOIA, but in this case a submitter may still designate records as described in paragraph (d)(3) of this section and in exceptional cases, at our discretion, may follow the notice procedures in paragraph (d)(4) of this section;

(vi) The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (d)(4)(iii) of this section (although this notice need not explain our decision or include a copy of the records).

(e) *Exemption five—Internal memoranda.* This exemption covers internal Government communications and notes that fall within a generally recognized evidentiary privilege. Internal Government communications

include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most common applicable privileges are:

(1) *The deliberative process privilege.* This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of this privilege is to prevent injury to the quality of the agency decisionmaking process by encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. This privilege continues to protect predecisional documents even after a decision is made. We will release purely factual material in a deliberative document unless that material is otherwise exempt. However, purely factual material in a deliberative document is within this privilege if:

(i) It is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, or

(ii) It would reveal the nature of the deliberative portions, or

(iii) Its disclosure would in some other way make possible an intrusion into the decisionmaking process.

(2) *Attorney-client privilege.* This privilege protects confidential communications between a lawyer and an employee or agent of the Government where an attorney-client relationship exists (e.g., where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance, and/or where the attorney has given advice to the client.

(3) *Attorney work product privilege.* This privilege protects documents prepared by or for an agency, or by or for its representative (usually USIA attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices as well as by attorneys. It includes factual material in such documents as well as material revealing

opinions and tactics. The privilege continues to protect the documents even after the litigation is closed.

(f) *Exemption six—Clearly unwarranted invasion of personal privacy.* We may withhold personnel, medical, and similar files and personal information about individuals if disclosure would constitute a clearly unwarranted invasion of personal privacy.

(1) *Balancing test.* In deciding whether to release records that contain personal or private information about someone else to a requester, we weigh the foreseeable harm of invading that individual's privacy against the public benefit that would result from the release of the information. In our evaluation of requests for records, we attempt to guard against the release of information that might involve a violation of personal privacy by a requester being able to "piece together items" or "read between the lines" information that would normally be exempt from mandatory disclosure.

(2) *Information frequently withheld.* We frequently withhold such information as home addresses, ages, minority group status, social security numbers, individual's benefits, earning records, leave records, etc.

(g) *Exemption seven—Law enforcement.* We are not required to release information or records that the Government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(1) *Enforcement proceedings.* We may withhold information when release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases, we may refuse to confirm or deny the existence of records that relate to violations in order not to disclose that an investigation is in progress or may be conducted.

(2) *Fair trial or impartial adjudication.* We may withhold records when release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(3) *Personal privacy.* We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be

vulnerable to innuendo, rumor, harassment, or retaliation.

(4) *Confidential sources and information.* We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local, or foreign Government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record, or information in it, has been compiled by a criminal law enforcement authority conducting a criminal investigation, or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(5) *Techniques and procedures.* We may withhold records reflecting special techniques or procedures of investigation or prosecution not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(6) *Life and physical safety.* We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment as well as to physical violence.

(h) *Exemptions eight and nine—records on financial institutions and records on wells.* Exemption eight permits us to withhold records about regulation or supervision of financial institutions.

(2) Exemption nine permits the withholding of geological and geophysical information and data, including maps, concerning wells.

R. Wallace Stuart,

Acting General Counsel.

Date: June 20, 1989.

[FR Doc. 89-14971 Filed 6-23-89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-16]

Special Local Regulations; International Freedom Festival Fireworks Display, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Freedom Festival Fireworks Display. This event will be held on the Detroit River on June 30, 1989. In case of inclement weather, the event will be held on July 1, 1989. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 8:00 p.m. on 30 June 1989 to 12:00 a.m. on July 2, 1989.

FOR FURTHER INFORMATION CONTACT:

MST2 Corey A. Bennett, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until March 30, 1989, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MST2 Corey A. Bennett, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Freedom Festival Fireworks Display will be conducted on the Detroit River on June 30, 1989. An unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol

Commander (Commander, U.S. Coast Guard Group Detroit, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0916 to read as follows:

§ 100.35-0916 International Freedom Festival Fireworks Display, Detroit River.

(a) *Regulated Area:* (1) The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 8:00 p.m. (local time) 30 June 1989 until 12:00 a.m. on 1 July 1989.

(2) The area bound on the south by the International Boundary, on the west by 083°03' W., on east by 083°02' W., and the north by the U.S. shoreline of the Detroit River will be closed to all vessel traffic, from 8:00 p.m. (local time) June 30, 1989 until 12:00 a.m. on July 1, 1989.

(b) *Special Local Regulations:* (1)

Vessels under 65 feet shall begin clearing the shipping channels at 11:30 p.m. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 5:00 p.m. on June 30, 1989, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: COBO HALL, VETERANS MEMORIAL BLDG., and the FORD AUDITORIUM. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white bands will mark each special mooring.

(3) If the weather on June 30, 1989 is inclement, the fireworks display and the river closure will be postponed until 8:00 p.m. 1 July 1989 to 12:00 a.m. on July 2, 1989. If postponed, notice will be given on June 30, 1989 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Effective Dates: This section is effective from 8:00 p.m. on June 30, 1989, to 12:00 a.m. on July 2, 1989.

Dated: June 16, 1989.

D.H. Ramsden,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-14978 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-89-02]

Special Local Regulations; Sohio Riverfest, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Sohio Riverfest. This event will be held on July 28, 29 and 30, 1989 on the Cuyahoga River, Cleveland, Ohio. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 7:00 p.m. on July 28, 1989 to 4:00 p.m. on July 30, 1989.

FOR FURTHER INFORMATION CONTACT:

MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On May 12, 1989 the Coast Guard published a notice of proposed rulemaking in the Federal Register for these regulations (54 FR 20607). Interested persons were requested to submit comments and five comments were received.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office

Discussion of Comments

Comments were received by the Lake Carrier's Association, Port Colborne Quarries Limited, USS Great Lakes Fleet, Inc., International Salt Company, and the Interlake Steamship Company. Of all the comments received, none favored the proposed extension of closure times. Since all the comments received favored river closures similar to those of the 1988 Sohio Riverfest, the closures will remain the same as in previous years.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of

spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0902 to read as follows:

§ 100.35-0902 *Sohio Riverfest, Cuyahoga River, Cleveland, Ohio.*

(a) *Regulated Area:* The portion of the Cuyahoga River from the Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge will be closed to vessel navigation or anchorage for vessels of more than 100 gross tons.

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation or anchorage by vessels of more than 100 gross tons from 7:00 pm (local time) until midnight on July 28, 1989; noon until 3:00 pm and 7:00 pm until midnight on July 29, 1989; and 1:00 pm until 4:00 pm on July 30, 1989.

(2) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a

minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) *Effective Dates:* This section is effective from 7:00 p.m. on July 28, 1989 to 4:00 p.m. on July 30, 1989.

Dated: June 16, 1989.

D.H. Ramsden,
Capt., U.S. Coast Guard Acting Commander,
Ninth Coast Guard District.

[FR Doc. 89-14979 Filed 6-23-89; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-89-18]

Special Local Regulations: Duluth Fourth Fest Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Duluth Fourth Fest Fireworks Display. This event will be held on July 4, 1989. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 7:30 p.m. until 11:00 p.m. on July 4, 1989.

FOR FURTHER INFORMATION CONTACT: MST2 Corey A. Bennett, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until June 5, 1989, and there was not sufficient time remaining to publish proposed rules in advance of the event.

This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MST2 Corey A. Bennett, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Duluth Fourth Fest Fireworks Display will be conducted in the Duluth Harbor on July 4, 1989, in connection with a day-long marine festival. This event will have falling ash and debris, and an unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (BMC A.R. Kraak, U.S. Coast Guard Group Duluth, MN).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 33.100.35.

2. Part 100 is amended to add a temporary § 100.35-0918 to read as follows:

§ 100.35-0918 Duluth Fourth Fest Fireworks Display.

(a) *Regulated Area:* That portion of the Duluth Harbor Basin Northern Section bounded on the south by a line drawn on a bearing of 087 degrees true from the Cargill Pier through Duluth Basin Lighted Buoy 5 (LLNR 15195) to the opposite shore on the north by the Duluth Aerial Bridge.

(b) *Special Local Regulations:* (1) The above portion of Duluth Harbor, Lake Superior will be closed to all commercial vessel navigation or anchorage from 7:30 p.m. (Local Time) until 11:00 p.m. on July 4, 1989.

(2) Duluth Harbor Basin Northern Section will be closed to all traffic from 7:30 p.m. (Local Time) until 11:00 p.m. on July 4, 1989 within 600 yards of position 46 degrees 46 minutes 47 seconds north and 092 degrees 06 minutes 10 seconds west.

(3) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event of any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective Dates:* This section is effective from 7:30 p.m. until 11:00 p.m. on July 4, 1989.

Dated: June 13, 1989.

D.H. Ramsden,
Capt. U.S. Coast Guard, Acting Commander,
Ninth Coast Guard District.

[FR Doc. 89-14977 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD2 89-03]

Special Local Regulations; Venetian Night Boat Parade**AGENCY:** Coast Guard, DOT.**ACTION:** Final rule.

SUMMARY: Special local regulations are being adopted for mile 483.0 to 489.0 of the Upper Mississippi River. The "Venetian Night Boat Parade," an approved marine event, will be held on July 2, 1989 at Davenport, Iowa. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 8:30 p.m. to 11:30 p.m. on July 2, 1989.

FOR FURTHER INFORMATION CONTACT: LTJG G.W. Wentz, Chief, Boating Affairs Branch, Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103-2398, (314) 425-5971.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG G.W. Wentz, project officer, Second Coast Guard District Boating Safety Division, and CDR J.T. Orchard, project attorney, Second Coast Guard District Legal Office.

Discussion of Regulations

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35 for the purpose of promoting the safety of life and property on the Upper Mississippi River between mile 483.0 and 489.0 during the "Venetian Night Boat Parade" on July 2, 1989. This event will consist of a lighted Boat Parade, which could pose hazards to navigation in the area. Therefore, these regulations are deemed necessary for the promotion of safety of life and property in the area

during this event. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, the impact of these regulations is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. These rules are necessary to ensure the protection of life and property in the area during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-0202 to read as follows:

§ 100.35-0202 Venetian Night Boat Parade.

(a) *Regulated Area:* The area between Mile 483.0 and 489.0 of the Upper Mississippi River is designated the regatta area, and will be closed to commercial and recreational navigation or mooring between the hours of 8:30 p.m. and 11:30 p.m. on July 2, 1989. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* (1) The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8

MHZ) by the call sign "COAST GUARD PATROL COMMANDER." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) *Effective Dates:* These regulations are effective from 8:30 p.m. to 11:30 p.m. on July 2, 1989 (local time).

Dated: June 16, 1989.

M. J. Moynihan,

*Captain, U.S. Coast Guard, Commander,
Second Coast Guard District, Acting.*

[FR Doc. 89-14980 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD2 89-04]

Special Local Regulations; Cincinnati Riverfront Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for mile 470.8 to 469.4 of the OHIO RIVER. The "Cincinnati Riverfront Regatta," an approved marine event, will be held on July 29 and 30, 1989 at Cincinnati, Ohio. These regulations are needed to provide for the

safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 9:00 a.m. to 7:00 p.m. on July 29, 1989 and from 9:00 a.m. to 7:00 p.m. on July 30, 1989.

FOR FURTHER INFORMATION CONTACT: LTJG G.W. Wente, Chief, Boating Affairs Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103-2398, (314) 425-5971.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG G.W. Wente, project officer, Second Coast Guard District Boating Safety Division, and CDR J.T. Orchard, project attorney, Second Coast Guard District Legal Office.

Discussion of Regulations

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35 for the purpose of promoting the safety of life and property on the Ohio River between miles 470.8 and 469.4 during the "Cincinnati Riverfront Regatta" on July 29 and 30, 1989. This event will consist of tunnel boat races, which could pose hazards to navigation in the area. Therefore, these regulations are deemed necessary for the promotion of safety of life and property in the area during this event. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, the impact of these regulations is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. These rules are necessary to ensure the

protection of life and property in the area during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water)

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-0203 to read as follows:

§ 100.35-0203 Cincinnati Riverfront Regatta.

(a) *Regulated Area:* The area between Mile 470.8 and 469.4 of the Ohio River is designated the regatta area, and will be closed to commercial and recreational navigation or mooring between the hours of 9:00 a.m. and 7:00 p.m. on July 29, 1989 and 9:00 a.m. and 7:00 p.m. on July 30, 1989. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* (1) The Coast Guard will maintain a patrol consisting of regular and Auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander

shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation of failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) *Effective Dates:* These regulations are effective from 9:00 a.m. to 7:00 p.m. on July 29, 1989 and from 9:00 a.m. to 7:00 p.m. on July 30, 1989 (local time).

Dated: June 16, 1989.

M.J. Moynihan,

Captain, U.S. Coast Guard, Commander,
Second Coast Guard District, Acting.

[FR Doc. 89-14976 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-53

Statement of Organization and Functions

AGENCY: General Services
Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising its statement of organization and functions to reflect its current organizational structure, functional arrangements, and organizational titles; and to correct the telephone number for a region. This regulation is informational in nature and is published in accordance with the Freedom of Information Act.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvester H. Kish, Director, Organization and Productivity Improvement Division, (202-566-0086).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purpose of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based

all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 105-53

Information Resources Management Service, Computer technology, Federal buildings and facilities, Federal Supply Service, Government property, Government property management, Organization and functions (Government agencies), Public Buildings Service, and Surplus Government property.

PART 105-53—STATEMENT OF ORGANIZATION AND FUNCTIONS

1. The authority citation for Part 105-53 continues to read as follows:

Authority: 5 U.S.C. 552(a)(1), Pub. L. 90-23, 81 Stat. 54 sec. (a)(1); 40 U.S.C. 486(c), Pub. L. 81-152, 63 Stat. 390, Sec. 205(c).

Subpart A—General

2. Section 105-53.112 is revised to read as follows:

§ 105-53.112 General statement of functions.

The General Services Administration, as a major policy maker, provides guidance and direction to Federal agencies in a number of management fields. GSA formulates and prescribes a variety of Governmentwide policies relating to procurement and contracting; real and personal property management; transportation, public transportation, public utilities and telecommunications management; automated data processing management; records management; the use and disposal of property; and the information security program. In addition to its policy role, GSA also provides a variety of basic services in the aforementioned areas to other Government agencies. A summary description of these services is presented by organizational component in Subpart B.

3. Section 105-53.120 is revised to read as follows:

§ 105-53.120 Address and telephone numbers.

The Office of the Administrator; Office of Ethics and Civil Rights; Office of the Executive Secretariat; Office of Small and Disadvantaged Business Utilization; Office of Inspector General; GSA Board of Contract Appeals;

Information Security Oversight Office; Office of Administration; Office of Congressional Affairs; Office of Acquisition Policy; Office of General Counsel; Office of the Comptroller; Office of Operations and Industry Relations; Office of Policy Analysis; Office of Public Affairs; Information Resources Management Service; Federal Property Resources Service; and Public Buildings Service are located at 18th and F Streets NW., Washington, DC 20405. The Federal Supply Service is located at Crystal Mall Building 4, 1941 Jefferson Davis Highway, Arlington, VA, however, the mailing address is Washington, DC 20406. The telephone number for the above addresses is 202-472-1082. The addresses of the eleven regional offices are provided in § 105-53.151.

Subpart B—Central Office

4. Section 105-53.134 is revised to read as follows:

§ 105-53.134 Office of Administration.

The Office of Administration, headed by the Associate Administrator for Administration, participates in the executive leadership of the agency; providing advice on the formulation of major policies and procedures, particularly those of a critical or controversial nature, to the Administrator and Deputy Administrator. The Office plans and administers programs in organization, productivity improvement, position management, training, staffing, position classification and pay administration, employee relations, workers' compensation, career development, GSA internal security, reporting requirements, regulations, internal directives, records correspondence procedures, Privacy and Freedom of Information Acts, printing and duplicating, mail, telecommunications, graphic design, cooperative administrative support, and support for congressional field offices. The office also serves as the central point of control for audit and inspection reports from the Inspector General and the Comptroller General of the United States; and manages the GSA internal controls evaluation, improvement, and reporting program. In addition, the office includes a secretariat to oversee Federal advisory committees.

§ 105-53.135 [Removed and reserved]

5. Section 105-53.135 is removed and reserved.

6. Section 105-53.136 is added to read as follows:

§ 105-53.136 Office of Congressional Affairs.

The Office of Congressional Affairs, headed by the Associate Administrator for Congressional Affairs, is responsible for directing and coordinating the legislative and congressional activities of GSA.

7. Section 105-53.139 is amended by revising paragraph (a) to read as follows:

§ 105-53.139 Office of the Comptroller.

(a) *Functions.* The Office of the Comptroller, headed by the Comptroller, is responsible for centralized agencywide budget and accounting functions; overall allocation and administrative control of agencywide resources and financial management programs; planning, developing, and directing GSA's executive management information system; and overseeing implementation of OMB Circular A-76 agencywide.

8. Section 105-53.140 is revised to read as follows:

§ 105-53.140 Office of Operations and Industry Relations.

The Office of Operations and Industry Relations, headed by the Associate Administrator for Operations and Industry Relations, is responsible for formulating GSA-wide policy that relates to regional operations, supervising GSA's Regional Administrators, and planning and coordinating GSA business and industry relations and customer liaison activities.

9. Section 105-53.144 is revised to read as follows:

§ 105-53.144 Federal Property Resources Service.

(a) *Creation and authority.* The Federal Property Resources Service (FPRS), headed by the Commissioner, Federal Property Resources Service, was established on July 18, 1978, by the Administrator of General Services to carry out the utilization and disposal functions for real and related personal property.

(b) *Functions.* FPRS is responsible for utilization surveys of Federal real property holdings; the reuse of excess real property; and the disposal of surplus real property.

(c) *Regulations.* Regulations pertaining to FPRS programs are published in 41 CFR Chapter 1, 41 CFR Chapter 101, Subchapter H, and 48 CFR Chapter 1. Information on availability of the regulations is provided in § 105-53.116

Subpart C—Regional Offices

10. Section 105-53.150 is revised to read as follows:

§ 105-53.150 Organization and functions.

Regional offices have been established in 11 cities throughout the United States. Each regional office is headed by a Regional Administrator who reports to the Associate Administrator for Operations and Industry Relations. The geographic composition of each region is shown in § 105-53.151.

11. Section 105-53.151 is amended by revising No. 10 to read as follows:

§ 105-53.151 Geographic composition, addresses, and telephone numbers.

No. 10 (Comprising the States of Alaska, Idaho, Oregon, and Washington); GSA Center, Auburn, WA 98001. Telephone: 206-931-7000.

Dated: June 15, 1989.

Paul T. Weiss,

Associate Administrator for Administration.

[FR Doc. 89-14959 Filed 6-23-89; 8:45 am]

BILLING CODE 6820-34-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6836]

List of Communities Eligible for the Sale of Flood Insurance; Maryland et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from

the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT:

Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Maryland	Betterton, town of	Kent	240095	May 4, 1989, suspension withdrawn.
Do	Unincorporated areas	Caroline	24013	Do.
Do	Crisfield, city of	Somerset	240062	Do.
Do	La Plata, town of	Charles	240092	Do.
Do	Unincorporated areas	Montgomery	240049	Do.
Do	do	Somerset	240061	Do.
Colorado	do	Adams	080001	May 17, 1989.
Do	Breckenridge, city of	Summit	080172	Do.
Do	Brighton, city of	Adams	080004	Do.
Do	Delta, city of	Delta	080043	Do.
Do	Evans, city of	Weld	080182	Do.
Kansas	Unincorporated areas	Chase	200040	Do.
Do	do	Clay	200052	Do.
Do	Elmdale, city of	Chase	200042	Do.
Do	Eudora, city of	Douglas	200089	Do.
Do	Harper, city of	Harper	200129	Do.
Do	Hunter, city of	Mitchell	200228	Do.
Do	La Crosse, city of	Rush	200308	Do.
Do	Rantoul, city of	Franklin	200107	Do.
Do	Virgil, city of	Greenwood	200122	Do.
Nebraska	Allen, village of	Dixon	310244	Do.
Do	Amherst, village of	Buffalo	310245	May 17, 1989, suspension withdrawn.
Do	Bristow, village of	Boyd	310012	Do.
Do	Ceresco, village of	Sounders	10197	Do.
Do	Clearwater, village of	Antelope	310262	Do.
Do	Crete, city of	Saline	310186	Do.
Do	Unincorporated areas	Dakota	310429	Do.
Do	do	Deuel	310430	Do.
Do	Elk Creek, village of	Johnson	310125	Do.
Do	Elkhorn, city of	Douglas	310075	Do.
Do	Franklin, city of	Franklin	310082	Do.
Do	Fullerton, city of	Nance	310152	Do.
North Dakota	Dodge, city of	Dunn	380027	Do.
South Dakota	Blunt, city of	Hughes	460039	Do.
Do	Brookings, city of	Brookings	460004	Do.
Utah	Cedar City, city of	Iron	490074	Do.
Colorado	Greeley, city of	Weld	080184	June 5, 1989.
Kansas	Unincorporated areas	Leavenworth	200186	Do.
Do	Lecompton, city of	Douglas	200091	Do.
Do	Neodesha, city of	Wilson	200359	Do.
Do	Unincorporated areas	Pawnee	200566	Do.
Nebraska	Henderson, city of	York	310378	June 5, 1989, suspension withdrawn.
Do	Hubbell, village of	Thayer	310220	Do.
Do	LaVista, city of	Sarpy	310192	Do.
Do	Linwood, village of	Butler	310028	Do.
Do	Litchfield, village of	Sherman	310295	Do.
Do	Loup City, city of	Sherman	310215	Do.
Do	Maxwell, village of	Lincoln	310300	Do.
Do	Newman Grove, city of	Madison	310393	Do.
Do	Omaha, city of	Douglas	315274	Do.
Do	Papillion, city of	Sarpy	315275	Do.
North Dakota	Burlington, city of	Ward	380650	Do.
Do	Casselton, city of	Cass	380020	Do.
Do	Harwood, city of	Cass	380338	Do.
Do	Harwood, township of	Cass	380259	Do.
Ohio	Ashtabula, city of	Ashtabula	390011	Do.
Do	Gambier, village of	Knox	390310	Do.
Do	Gloria Glens, village of	Medina	390381	Do.
South Dakota	Belle Fourche, city of	Butte	460012	Do.
Wyoming	Douglas, town of	Converse	560013	Do.
Do	Evansville, town of	Natrona	560071	Do.

Issued: June 20, 1989.

Harold T. Duryee,

Administrator, Federal Insurance
Administration.

[FR Doc. 89-15016 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6835]

Suspension of Community Eligibility; New York et al.

AGENCY: Federal Emergency
Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance

coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities

listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New York: West Union, town of, Steuben County	361437	July 27, 1975, Emerg.; July 1, 1988, Reg.; July 4, 1989, Susp.	July 4, 1989	July 4, 1988.
Region III				
Pennsylvania:				
Beccaria, township of, Clearfield County	421512	Apr. 8, 1976, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	July 4, 1989.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Coalport, borough of, Clearfield County.....	420301	Aug. 12, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
College, township of, Centre County.....	420259	Apr. 19, 1973, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Curwensville, borough of, Clearfield County.....	420302	July 7, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Harrison, township of, Bedford County.....	421338	Oct. 24, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Little Meadows, borough of, Susquehanna County.....	420814	Oct. 29, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Mahaffey, borough of, Clearfield County.....	420310	Feb. 28, 1977, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
North Franklin, township of, Washington County.....	422150	Sept. 10, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Sugarloaf, township of, Columbia County.....	421558	Apr. 3, 1979, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
West Providence, township of, Bedford County..	421353	Nov. 11, 1974, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Virginia: Northumberland County, unincorporated areas.	510107	Oct. 9, 1973, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Region IV				
Alabama:				
Dale County, unincorporated areas.....	010060	Sept. 10, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Daleville, city of, Dale County.....	010061	Apr. 11, 1975, Emerg.; Sept. 4, 1985, Reg.; July 4, 1985, Susp.	.....do	Do.
Moody, town of, St. Clair County.....	010187	May 21, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Pell City, city of, St. Clair County.....	010189	May 5, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Region V				
Minnesota: Blue Earth, city of, Faribault County.....	270116	Apr. 22, 1975, Emerg.; May 3, 1982, Reg.; July 4, 1989, Susp.	.....do	Do.
Region VII				
Kansas: Bazine, city of, Ness County.....	200243	Oct. 14, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Region VIII				
South Dakota: Mountain View, town of, Uinta County.....	560092	Aug. 25, 1977, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Apolacon, township of, Susquehanna County.....	422072	Feb. 10, 1976, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	July 17, 1989.	July 17, 1989.
Burnside, borough of, Clearfield County.....	420298	Jan. 29, 1976, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Ferguson, township of, Centre County.....	420260	May 17, 1973, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Londonderry, township of, Bedford County.....	421345	Aug. 12, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Penn, township of, Clearfield County.....	421530	Jan. 16, 1981, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
South Franklin, township of, Washington County.....	422563	Sept. 11, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Walker, township of, Centre County.....	421471	Sept. 16, 1974, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
West Brunswick, township of, Schuylkill County..	422028	Aug. 1, 1979, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
West St. Clair, township of, Bedford County.....	421354	Apr. 22, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Virginia: Grayson County, unincorporated areas	510243	Dec. 4, 1977, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Region IV				
Georgia: Oconee County, unincorporated areas.....	130453	Oct. 16, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Mississippi: Bolivar County, unincorporated areas.....	280011	May 4, 1973, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Region VI				
Texas: Denver City, city of, Yoakum County.....	480682	Aug. 15, 1974, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.
Region VIII				
Colorado: Oak Creek, township of, Routt County.....	080158	June 16, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region X				
Idaho: Glenns Ferry, city of, Elmore County.....	160057	May 27, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do.....	Do.
Oregon:				
Crook County, unincorporated areas.....	410050	Feb. 14, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do.....	Do.
Jefferson County, unincorporated areas.....	410101	Apr. 30, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do.....	Do.
Madras, city of, Jefferson County.....	410103	Apr. 22, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do.....	Do.
Prineville, city of, Crook County.....	410051	Jan. 30, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do.....	Do.
Wheeler County, unincorporated areas.....	410245	Sept. 25, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	.....do.....	Do.

Code for reading 3rd column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

Issued: June 20, 1989.

[FR Doc. 89-15015 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 65

[Docket No. FEMA-6958]

Changes in Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESS: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the

community, listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified

for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona	Pima	Unincorporated Areas	May 12, 1989 May 19, 1989 <i>Daily Territorial</i>	The Honorable Dan Eckstrom, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.	May 3, 1989	040073
Florida	Dade	Unincorporated Areas	May 19, 1989 May 26, 1989 <i>Miami Review</i>	The Honorable Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 N.W. 1st Street, Suite 2910, Miami, Florida 33128-1971.	May 10, 1989	125098
Georgia	DeKalb	Unincorporated Areas	June 8, 1989 June 15, 1989 <i>Decatur-DeKalb News-ERA</i>	The Honorable Manuel J. Maloof, Chief Executive Officer, DeKalb County, County Courthouse, 556 North McDonough, Decatur, Georgia 30030.	May 26, 1989	130065
Kansas	Sedgwick	Unincorporated Areas	June 15, 1989 June 22, 1989 <i>Daily Reporter</i>	The Honorable Paul W. Hancock, Chairman, Board of County Commissioners, 525 North Main, 3rd Floor, Wichita, Kansas 67203.	May 31, 1989	200321
Kansas	Sedgwick	City of Wichita	June 15, 1989 June 22, 1989 <i>Daily Reporter</i>	The Honorable Sheldon Kamen, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	May 31, 1989	200328
New York	Suffolk	Town of East Hampton	June 8, 1989 June 15, 1989 <i>The East Hampton Star</i>	The Honorable Tony Bullock, Supervisor of the Town of East Hampton, 159 Pantigo Road, East Hampton, New York 11937.	May 30, 1989	360794 C
Texas	Comal and Guadalupe	City of New Braunfels	June 16, 1989 June 23, 1989 <i>New Braunfels Herald Zeitung</i>	The Honorable Douglas Miller, Mayor of the City of New Braunfels, P.O. Box 311596, New Braunfels, Texas 78131.	May 19, 1989	485493

Issued: June 12, 1989.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

[FR Doc. 89-15013 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Louisiana et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and

Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not

have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Louisiana.....	Unincorporated areas (FEMA Docket No. 6942).	St. Mary Parish.....	Nov. 18, 1988, Nov. 25 1988. <i>The Daily Review</i>	The Honorable Prescott Foster, President of the St. Mary Parish Council, 5th Floor Courthouse, Franklin, Louisiana 70530.	Nov. 3, 1988	220192
Maryland.....	Queen Anne's (FEMA Docket No. 6947).	Unincorporated areas..	Jan. 4, 1989, Jan. 11, 1989.. <i>Queen Anne's County Record-Observer</i>	The Honorable Robert Sallitt, Queen Anne's County Administrator, 208 North Commerce Street, Centerville, Maryland 21617.	Dec. 21, 1988	240054 C
Massachusetts.....	Norfolk (FEMA Docket No. 6940).	City of Quincy.....	Oct. 14, 1988, Oct. 21, 1988. <i>The Patriot Ledger</i>	The Honorable Francis X. McCaughey, Mayor of the City of Quincy, 1305 Hancock Street, Quincy, Massachusetts 02169.	Sept. 30, 1988	255219 B
Missouri.....	St. Louis (Docket No. FEMA-6953).	City of Florissant.....	Feb. 13, 1989, Feb. 20, 1989. <i>St. Louis Post Dispatch</i>	The Honorable James J. Eagan, Mayor, City of Florissant, City Hall, 955 Rue St. Francois, Florissant, Missouri 63031.	Feb. 2, 1989	290352
Ohio.....	Montgomery (Docket No. FEMA-6953).	City of Trotwood.....	Feb. 23, 1989, Mar. 2, 1989.. <i>Dayton Daily News</i>	The Honorable Richard J. Haas, Mayor, City of Trotwood, 35 North Olive Road, Trotwood, Ohio 45426.	Feb. 13, 1989	390417
South Carolina.....	Orangeburg (Docket No. FEMA-6950).	City of Orangeburg.....	Feb. 9, 1989, Feb. 16, 1989.. <i>The Orangeburg Times and Democrat</i>	The Honorable E.O. Pendarvis, Mayor, City of Orangeburg, P.O. Box 387, Orangeburg, South Carolina 29115.	Jan. 31, 1989	450164
Texas.....	Tarrant and Denton (FEMA Docket No. 6950).	City of Fort Worth.....	Feb. 2, 1989, Feb. 9, 1989.. <i>Fort Worth Star Telegram</i>	The Honorable Bob Bolen, Mayor of the City of Fort Worth, Tarrant and Denton Counties, 1000 Throckmorton Street, Fort Worth, Texas 76102.	Jan. 26, 1989	480596 D

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: June 12, 1989.

[FR Doc. 89-15014 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Connecticut et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

Management Agency, Washington, D.C. 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the *Federal Register* for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the

community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD) Modified.
CONNECTICUT	
Somers (town), Tolland County (FEMA docket No. 6948)	
Unnamed Tributary:	
At confluence with Abbey Brook	*210
Just upstream of State Route 83 (South Road)	*325
Abbey Brook:	
Approximately 550 feet upstream of Ninth District Road	*210
Approximately 1,720 feet upstream of Ninth District Road	*210
Maps available for inspection at the Town Office, 600 Main Street, Somers, Connecticut.	
FLORIDA	
Orange County (unincorporated areas) (FEMA docket No. 6949)	
Harvest Lake: At shoreline	*92
St. Johns River:	
At Seminole County boundary	*11

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD) Modified.
Just upstream of State Road 520	*18
Maps available for inspection at the Department of Engineering, Engineering and Water Management, 2450 33rd Street, Orlando, Florida.	
Polk County (unincorporated areas) (FEMA docket No. 6948)	
Lake Garfield: Along shoreline	*107
Maps available for inspection at the Polk County Engineering Department, 168 West Main, Bartow, Florida.	
GEORGIA	
DeKalb County (unincorporated areas) (FEMA docket No. 6949)	
Stone Mountain Creek:	
Just downstream of dam at Water's Edge Lake	*758
Just upstream of dam at Water's Edge Lake	*772
Just upstream of North Deshon Road	*773
Stone Mountain Creek Tributary A:	
At mouth	*772
About 1,400 feet upstream of mouth	*772
About 250 feet upstream of Water's Edge Drive	*781
Crooked Creek Tributary, Stone Mountain Creek:	
Just downstream of dam at Crooked Creek Lake	*757
Just upstream of dam at Crooked Creek Lake	*768
About 850 feet downstream of South Deshon Road	*768
Maps available for inspection at DeKalb County, 556 North McDonough, Decatur, Georgia 30050.	
Marietta (city), Cobb County (FEMA docket No. 6949)	
Ward Creek:	
About 100 feet upstream of confluence of Westside Branch	*1018
About 350 feet downstream of Whitlock Drive	*1030
Just downstream of Whitlock Drive	*1032
Westside Branch:	
About 400 feet upstream of confluence with Ward Creek	*1017
About 325 feet downstream of Polk Street	*1052
About 900 feet upstream of Polk Street	*1085
Elizabeth Branch:	
About 580 feet downstream of Cobb Industrial Boulevard	*1033
Just upstream of Interstate 75	*1058
About 450 feet upstream of Interstate 75	*1068
Sope Creek:	
At confluence of Sope Branch	*1022
Just downstream of Page Street	*1027
Just upstream of Page Street	*1037
Poorhouse Creek:	
Just downstream of U.S. Highway 41	*938
About 500 feet upstream of U.S. Highway 41	*942
About 0.83 mile upstream of U.S. Highway 41	*950
Maps available for inspection at the City Hall, Marietta, Georgia.	
MINNESOTA	
St. Paul (city), Ramsey County (FEMA docket No. 6948)	
Mississippi River:	
About 2.7 miles downstream of Chicago & North Western railroad bridge	*704
Just downstream of Lock and Dam Number One	*717
Just upstream of Lock and Dam Number One	*734
Maps available for inspection at the St. Paul Planning Division, Division of Planning and Economic Development, 25 West Fourth Street, St. Paul, Minnesota.	
MISSISSIPPI	
Madison (city), Madison County (FEMA docket No. 6948)	
Hearn Creek:	
About 1920 feet downstream of Northbay Drive	*300

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD) Modified.
About 170 feet downstream of Northbay Drive	*303
About 1780 feet upstream of Northbay Drive	*310
Maps available for inspection at the Maintenance Facility Building, 525 Post Oak Road, Madison, Mississippi.	
MISSOURI	
Jackson County (unincorporated areas) (FEMA docket No. 6948)	
Little Blue River:	
At confluence with Missouri River	*723
About 1.6 miles downstream of Blue Hills Road	*726
Just upstream of U.S. Highway 24	*732
Maps available for inspection at the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri.	
NEW JERSEY	
Ramsey (town), Bergen County (FEMA docket No. 6945)	
Valentine Brook Tributary No. 2:	
Upstream of Private Road (approximately 865 feet upstream of South Central Avenue)	*332
Downstream side of East Main Street	*340
Maps available for inspection at the Borough Building, 33 North Central Avenue, Ramsey, New Jersey.	
Wanaque (Borough), Passaic County (FEMA docket No. 6948)	
Stephens Lake Brook: Approximately 200 feet upstream of Wilson Drive	*269
Maps available for inspection at the Borough Clerk's Office, Borough Hall, 579 Ringwood Avenue, Wanaque, New Jersey.	
NEW YORK	
Fredonia (village), Chautauque County (FEMA docket No. 6943)	
Canadaway Creek:	
Approximately 1,670 feet downstream of Risley Street bridge	*669
Approximately 310 feet downstream of Liberty Street bridge	*745
Maps available for inspection at the Building Inspector's Office, Village Hall, Fredonia, New York.	
NORTH CAROLINA	
Greensboro (city), Guilford County (FEMA docket No. 6949)	
South Buffalo Creek:	
About 4,000 feet downstream of Interstate 85	*718
Just downstream of Interstate 85	*721
Maps available for inspection at the City of Greensboro, Planning Development, Greensboro, North Carolina.	
Guilford County (unincorporated areas) (FEMA docket No. 6949)	
South Buffalo Creek:	
Just upstream of State Road 6	*715
About 800 feet upstream of State Road 6	*717
Just upstream of Interstate 85	*722
Maps available for inspection at the County Planning & Development, 201 S. Eugene, Greensboro, North Carolina 27402.	
OHIO	
Brecksville (city), Cuyahoga County (FEMA docket No. 6948)	
Chippewa Creek:	
Just downstream of Chippewa Road	*812
Just upstream of Brecksville Road	*832
Just upstream of the upstream crossing of Old Royalton Road	*874

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD) Modified
Maps available for inspection at the Building Department, 9069 Brecksville Road, Brecksville, Ohio.	
Chilo (village), Clermont County (FEMA docket No. 6948)	
<i>Ohio River:</i>	
At downstream corporate limits (river mile 434.8).....	*508
At upstream corporate limits (river mile 434.0).....	*508
Maps available for inspection at the Community Building, 310 Washington Street, Chilo, Ohio.	
Dublin (City), Franklin, Delaware and Union Counties (FEMA docket No. 6948)	
<i>North Fork Indian Run:</i>	
Just upstream of Brand Road.....	*886
About 500 feet downstream of Brandonway Drive.....	*887
About 500 feet upstream of confluence of Tributary 11.....	*891
<i>Tributary S1</i>	
About 850 feet upstream of Interstate 270.....	*899
About 1000 feet upstream of Interstate 270.....	*900
Maps available for inspection at the City Hall, 6855 Coffman Road, Dublin, Ohio.	
OKLAHOMA	
Oklahoma City (city), Canadian, Cleveland, Oklahoma, McClain, and Pottawatomie Counties (FEMA docket No. 6948)	
<i>Deep Fork Tributary 12:</i>	
Approximately 850 feet upstream from confluence with Deep Fork.....	*1,071
Approximately 1,400 feet downstream of 50th Street.....	*1,078
<i>Deep Fork Tributary 13:</i>	
Approximately 60 feet upstream from confluence with Deep Fork.....	*1,072
Approximately 40 feet downstream from Northeast Lake Dam.....	*1,077
Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.	
TEXAS	
Grapevine (city) Dallas and Tarrant Counties (FEMA docket No. 6948)	
<i>Bear Creek:</i>	
Approximately 1,200 feet downstream of confluence of Tributary BB-5.....	*553
Approximately 1,300 feet upstream of confluence of Tributary BB-5.....	*558
<i>Tributary BB-5:</i>	
Confluence with Bear Creek.....	*554
Approximately 10 feet downstream on Creekwood Drive.....	*563
Maps available for inspection at the Department of Public Works, 307 West Dallas Road, Grapevine, Texas.	
Leon Valley (city), Bexar County (FEMA docket No. 6934)	
<i>Zarzamora Creek:</i>	
Approximately 1,150 feet downstream of Bandera Road.....	*803
Upstream side of Bandera Road.....	*812
<i>Tributary A to Zarzamora Creek:</i>	
Downstream corporate limits.....	*814
Upstream corporate limits.....	*817
<i>Drain 4—Zarzamora Creek:</i>	
Confluence with Zarzamora Creek.....	*812
Approximately 900 feet upstream of the confluence of Zarzamora Creek.....	*824
Maps available for inspection at 6400 El Verde Road, San Antonio, Texas.	

Issued: June 12, 1989.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

[FR Doc. 89-15011 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 300**RIN 3067-AB11****Disaster Preparedness Assistance**

AGENCY: Federal Emergency
 Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule removes § 300.6, Earthquake and Hurricane Plans and Preparedness, in 44 CFR Part 300, Disaster Preparedness Assistance. No proposed or interim rule has been previously published in the *Federal Register* for this action. A separate rulemaking action (44 CFR 361) was completed to amend the earthquake portion of that regulation on October 1, 1987.

The reason for this action is that the existing regulation no longer applies to the administration by the Federal Emergency Management Agency (FEMA) of its Hurricane Preparedness Program because of changes over the past few years. Section 201 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (previously known as the Disaster Relief Act of 1974) establishes a mechanism for providing Federal Technical assistance to States and authorizes grants to develop and improve capabilities of State governments to deliver disaster assistance and to prepare for and mitigate natural hazards to which the grant recipient is exposed. On January 19, 1989, FEMA published a final rule in the *Federal Register*, Vol. 54, No. 12, p. 2127, that prescribed requirements for the implementation of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Procedures for obtaining technical and financial assistance by State and local governments under Hurricane Preparedness Program are contained in the FEMA publications: "A Guide to Hurricane Preparedness Planning for State and Local Officials," CPG 2-16, December, 1984, as revised, and "CCA Policies and Procedures Guide," Civil Preparedness Guide (CPG) 1-38, June 1986.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT:
 Frederick H. Sharrocks, Jr., Chief, Field
 Operations Branch, Earthquake and
 Natural Hazards Programs Division;

telephone 202/646-2796, or at the
 following address: Federal Emergency
 Management Agency, 500 C Street SW.,
 Room 625, Washington, DC 20476.

SUPPLEMENTARY INFORMATION:

Significant changes have occurred over the past several years in the Hurricane Preparedness Program administered by the Federal Emergency Management Agency (FEMA) necessitating this action. The vehicle used by FEMA for providing financial and technical assistance to States in a Comprehensive Cooperative Agreement (CCA) with the State department of emergency management or another agency designated by the Governor as having responsibility for a hurricane preparedness planning project. Funding is usually not provided by FEMA directly to local units of government. If it is determined through negotiations or other discussions with State and/or local officials that FEMA funding is to be provided to a local jurisdiction, the funding will generally be passed through the appropriate State agency to the local government.

Since Fiscal Year 1984, States were offered the option of designating the U.S. Army Corps of Engineers as the Project Management Agency of a Hurricane Preparedness Study. Most States selected this option for conducting their Population Preparedness Project for hurricane evacuation. The U.S. Army Corps of Engineers jointly funds with FEMA those Hurricane Preparedness Studies for which it serves as the Project Management Agency. FEMA's funds for the Project are then transferred directly to the U.S. Army Corps of Engineers, as the Project Management Agency, by means of an Interagency Agreement and no funds are given to the State. This option was also selected by some States for a Property Protection Project to develop a hurricane hazard mitigation plan. The Office of Ocean and Coastal Resource Management, National Weather Service, and National Hurricane Center in the National Oceanic and Atmospheric Administration have also provided funds for Hurricane Preparedness Studies. These options are explained in "A Guide to Hurricane Preparedness Planning for States and Local Officials," CPG 2-16, currently being revised by FEMA.

List of Subjects in 44 CFR Part 300

Disaster assistance.

Accordingly, amend 44 CFR Part 300, Chapter I, Subchapter E as follows:

PART 300—[AMENDED]

1. The authority citation of Part 300 continues to read:

Authority: 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of E.O. 12148.

§ 300.6 [Removed]

2. Section 300.6 is removed.

Grant C. Peterson,

Associate Director, State and Local Programs and Support Directorate.

[FR Doc. 89-15010 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****48 CFR Part 352****Solicitations Provisions and Contract Clauses**

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health and Human Services is amending its acquisition regulations to update its existing sets of general provisions and to add six new sets. The update consolidates all additions, removals, and revisions to the existing general provisions which have not undergone a major revision since April, 1984. The update includes: (1) Renaming the general provisions to general clauses; (2) Revising the general provisions to include the latest Federal Acquisition Regulation (FAR) and Health and Human Services Acquisition Regulation (HHSAR) clauses which are required by the regulations; (3) Establishing six new sets of general clauses for Negotiated Fixed-Price Service Contracts, Cost-Reimbursement Service Contracts, Cost-Reimbursement Research and Development Contracts, Time-and-Materials or Labor-Hour Contracts, Sealed Bid Construction Contracts, and Negotiated Fixed-Price Architect-Engineer Contracts.

The general clauses will provide consistency and uniformity in use of the FAR and HHSAR clauses required in Departmental contracts. The general clauses will reduce contractor uncertainty as to which clauses would apply to their contracts with HHS. It will also reduce administrative burden on the parts of both the government and contractor personnel in preparing, reviewing and understanding the Department's contract clauses.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Norman Audi, Division of Acquisition Policy (202/245-0326).

SUPPLEMENTARY INFORMATION: On September 15, 1988, the proposed rule on revised general contract clauses was published in the *Federal Register* (53 FR 35852) and invited public comments by October 31, 1988. As a result, the following comments were received.

One commenter suggested that the applicability instructions should not be included in the sets of general clauses since the contractor officer, not the contractor, is responsible for determining which clauses apply to a contract. We concur. Therefore, we have removed all clauses with applicability instructions in the clause arrays. The contracting officer will add the appropriate clauses which will be specifically applicable to the instant procurement.

Several educational institutions requested that the Changes—Cost-Reimbursement, 52.243-2 (Alternate V), for contracts with educational institutions should be optional since the FAR guidance permits its voluntary use. We concur and have deleted the clause from the General Clauses for a Cost-Reimbursement Contract with Educational Institutions. Contractor officers may use the clause pursuant to the FAR prescription in 52.243-2 (Alternate V).

Several educational institutions suggested that Alternate I be added to the Cost Contract—No Fee clause at 52-216-11 since the issue of withholding payments is already covered in clause 352.232-9. We concur and have changed the clause.

Several educational institutions suggested that the Walsh-Healy Public Contracts Act at 52.222-20 be deleted since it is prescribed only for contracts for the manufacture of furnishing of supplies which clearly is not the function of a college or university. We concur and have deleted the clause from the General Clauses for a Contract with an Educational Institution.

Several educational institutions suggested that all reference to colleges and universities in the General Clauses of a Cost-Reimbursement Research and Development Contract be deleted since it is inconsistent with the HHS desire to clarify the sets of clauses to be used for a particular purpose or group of performers. We concur and have revised the general clause array accordingly.

We have also added internal instructions to 352-370(c) which will aid in clarifying the use of the general clause arrays.

This final rule is not a major rule for the purposes of Executive Order 12291

of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that the final rule will not have a significant impact on small business entities.

This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The provisions of this final rule will be issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Part 352

Government procurement.

48 CFR Chapter 3 is amended in the manner set forth below.

Dated: June 9, 1989.

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Administrative and Management Services.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations, is amended as shown.

1. The authority citation for Part 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. The table of contents for Subpart 352.3 is revised to read as follows:

Subpart 352.3—Provision and Clause Matrices

Sec.

352.370 General.

General Clauses

Negotiated Fixed-Price Supply Contract

Cost-Reimbursement Supply Contract

Negotiated Fixed-Price Service Contract

Cost-Reimbursement Service Contract

Negotiated Fixed-Price Research and

Development Contract

Cost-Reimbursement Research and

Development Contract

Sealed Bid Supply Contract

Cost-Plus-A-Fixed-Fee Contract

Cost-Reimbursement Contract With

Nonprofit Institutions Other Than

Educational Institutions

Cost-Reimbursement Contract With

Educational Institutions

Time-and-Materials or Labor-Hour Contract

Sealed Bid Construction Contract

Negotiated Fixed-Price Architect-Engineer

Contract.

352.370 [Amended]

3. Section 352.370 is amended as follows:

a. Existing paragraphs (a), (b), and (c) are redesignated as (c), (d), and (e), respectively.

b. The following are added as paragraphs (a) and (b):

(a) Contracting Officers shall use the clause arrays which they believe are appropriate to the instant contract.

(b) Contracting officers are required to review FAR Part 52 for other clauses which are appropriate to each individual procurement. Contracting officers shall also review the clause matrices at FAR Subpart 52.3, as applicable.

c. In newly designated paragraph (c), replace the word "provisions" with the word "clauses."

d. Revise newly designated paragraph (e) to read as follows:

(e) The general clauses for cost-reimbursement contracts with nonprofit institutions other than educational institutions shall be utilized with the

following modifications whenever a contract with a nonprofit institution provides for the payment of a fixed fee:

(1) Add the clause entitled "Facilities Capital Cost of Money" (SEP 1987) if the prospective contractor proposes facilities capital cost of money in its offer (see FAR 52.215-30 for the text of the clause). Add the clause entitled "Waiver of Facilities Capital Cost of Money" (SEP 1987) if the prospective contractor does not propose facilities capital cost of money in its offer (See FAR 52.215-31 for the text of the clause).

(2) Add the clause entitled "Fixed Fee" (APR 1984). (See FAR 52.216-8 for the text of the clause.)

(3) Delete "Alternate I" (JUL 1985) of clause 41 entitled "Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).

(4) Substitute the clause at HHSAR 352.249-14, Excusable Delays, for FAR 52.249-14, Excusable Delays.

4. Remove the existing clause matrices following section 352.370, and replace them with the following:

GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE SUPPLY CONTRACT

Clauses Incorporated By Reference

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I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1)

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-6.....	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
6.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
7.	52.215-2.....	Audit—Negotiation (APR 1988).
8.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
9.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
10.	52.215-33.....	Order of Precedence (JAN 1986).
11.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
13.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
17.	52.222-20.....	Walsh-Healey Public Contracts Act (APR 1984).
18.	52.222-26.....	Equal Opportunity (APR 1984).
19.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
20.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223-2.....	Clear Air and Water (Over \$100,000) (APR 1984).
24.	52.223-6.....	Drug-Free Workplace (MAR 1989).
25.	52.227-1.....	Authorization and Consent (APR 1984).
26.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
27.	52.227-3.....	Patent Indemnity (APR 1984).
28.	52.227-14.....	Rights in Data—General (JUN 1987).
29.	52.229-5.....	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (APR 1984).
30.	52.232-1.....	Payments (APR 1984).
31.	52.232-8.....	Discounts for Prompt Payment (APR 1989).
32.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
33.	52.232-11.....	Extras (APR 1984).
34.	52.232-17.....	Interest (APR 1984).
35.	52.232-23.....	Assignment of Claims (JAN 1986).
36.	52.232-25.....	Prompt Payment (APR 1989).
37.	52.233-1.....	Disputes (APR 1984).
38.	52.233-3.....	Protest After Award (JUN 1985).
39.	52.243-1.....	Changes—Fixed-Price (AUG 1987).
40.	52.244-1.....	Subcontracts (Fixed-Price Contracts) (Over \$500,000) (JAN 1986).
41.	52.244-5.....	Competition in Subcontracting (APR 1984).
42.	52.245-2.....	Government Property (Fixed-Price Contracts) (APR 1984).
43.	52.246-2.....	Inspection of Supplies—Fixed-Price (JUL 1985).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1)—Continued

No.	FAR clause No.	Title and date
44.	52.246-16.....	Responsibility for Supplies (APR 1984).
45.	52.248-1.....	Value Engineering (Over \$100,000) (MAR 1989).
46.	52.249-2.....	Termination for Convenience of the Government (Fixed-Price) (APR 1984).
47.	52.249-8.....	Default (Fixed-Price) Supply and Service (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984).
2.	352.232-9.....	Withholding of Contract Payments (APR 1984).
3.	352.270-4.....	Pricing of Adjustments (APR 1984).
4.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT SUPPLY CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-6.....	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
6.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
7.	52.215-2.....	Audit—Negotiation (APR 1988).
8.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
9.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
10.	52.215-33.....	Order of Precedence (JAN 1986).
11.	52.216-7.....	Allowable Cost and Payment (APR 1984).
12.	52.216-8.....	Fixed Fee (APR 1984).
13.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
14.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
15.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).
16.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
17.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
18.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
19.	52.222-20.....	Walsh-Healey Public Contracts Act (APR 1984).
20.	52.222-26.....	Equal Opportunity (APR 1984).
21.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontractors (\$1,000,000 or more) (APR 1984).
22.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
23.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
24.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
25.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
26.	52.223-8.....	Drug-Free Workplace (MAR 1989).
27.	52.227-1.....	Authorization and Consent (APR 1984).
28.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
29.	52.227-3.....	Patent Indemnity (APR 1984).
30.	52.227-14.....	Rights in Data—General (JUN 1987).
31.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
32.	52.232-17.....	Interest (APR 1984).
33.	52.232-20.....	Limitation of Cost (APR 1984).
34.	52.232-23.....	Assignment of Claims (JAN 1986).
35.	52.232-25.....	Prompt Payment (APR 1989).
36.	52.233-1.....	Disputes (APR 1984).
37.	52.233-3.....	Protest After Award (JUN 1985) Alternate 1 (JUN 1985).
38.	52.242-1.....	Notice of Intent to Disallow Costs (APR 1984).
39.	52.243-2.....	Changes—Cost-Reimbursement (AUG 1987).
40.	52.244-2.....	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
41.	52.244-5.....	Competition in Subcontracting (APR 1984).
42.	52.245-5.....	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
43.	52.246-3.....	Inspection of Supplies—Cost-Reimbursement (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
44.	52.246-23.....	Limitation of Liability (APR 1984).
45.	52.248-1.....	Value Engineering (Over \$100,000) (MAR 1989).
46.	52.249-6.....	Termination (Cost-Reimbursement) (May 1986).
47.	52.249-14.....	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228-70.....	Required Insurance (APR 1984).
3.	352.232-9.....	Withholding of Contract Payments (APR 1984).
4.	352.233-70.....	Litigation and Claims (APR 1984).
5.	352.242-71.....	Final Decisions on Audit Findings (APR 1984).
6.	352.270-5.....	Key Personnel (APR 1984).
7.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE SERVICE CONTRACT

Clauses Incorporated by Reference

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2.	52.203-3.....	Gratuities (APR 1984).
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5.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
6.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
7.	52.215-2.....	Audit—Negotiation (APR 1988).
8.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
9.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
10.	52.215-33.....	Order of Precedence (JAN 1986).
11.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
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17.	52.222-3.....	Convict Labor (APR 1984).
18.	52.222-4.....	Contract Work Hours and Safety Standards Act—Overtime Compensation (MAR 1986).
19.	52.222-26.....	Equal Opportunity (APR 1984).
20.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
21.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
22.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
23.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
24.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
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28.	52.227-3.....	Patent Indemnity (APR 1984).
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32.	52.232-8.....	Discounts for Prompt Payment (APR 1989).
33.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
34.	52.232-11.....	Extras (APR 1984).
35.	52.232-17.....	Interest (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
36.	52.232-23.....	Assignment of Claims (JAN 1986).
37.	52.232-25.....	Prompt Payment (APR 1989).
38.	52.233-1.....	Disputes (APR 1984).
39.	52.233-3.....	Protest After Award (JUN 1985).
40.	52.243-1.....	Changes—Fixed-Price (AUG 1987) Alternate I (APR 1984).
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42.	52.244-5.....	Competition in Subcontracting (APR 1984).
43.	52.245-2.....	Government Property (Fixed-Price Contracts) (APR 1984).
44.	52.246-4.....	Inspection of Services—Fixed Price (APR 1984).
45.	52.246-25.....	Limitation of Liability—Services (APR 1984).
46.	52.248-1.....	Value Engineering (Over \$100,000) (MAR 1989).
47.	52.249-4.....	Termination for Convenience of the Government (Services) (Short Form) (APR 1984).
48.	52.249-8.....	Default (Fixed-Price Supply and Service) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984).
2.	352.232-9.....	Withholding of Contract Payments (APR 1984).
3.	352.270-4.....	Pricing of Adjustments (APR 1984).
4.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT SERVICE CONTRACT**Clauses Incorporated by Reference**

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19.	52.222-3.....	Convict Labor (APR 1984).
20.	52.222-4.....	Contract Work Hours and Safety Standards Act—Overtime Compensation (MAY 1986).
21.	52.222-26.....	Equal Opportunity (APR 1984).
22.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
23.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
24.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
25.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
26.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
27.	52.223-6.....	Drug-Free Workplace (MAR 1989).
28.	52.227-1.....	Authorization and Consent (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

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29.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
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33.	52.232-17.....	Interest (APR 1984).
34.	52.232-20.....	Limitation of Cost (APR 1984).
35.	52.232-23.....	Assignment of Claims (JAN 1986).
36.	52.232-25.....	Prompt Payment (APR 1989).
37.	52.233-1.....	Disputes (APR 1984).
38.	52.233-3.....	Protest After Award (JUN 1985) Alternate I (JUN 1985).
39.	52.242-1.....	Notice of Intent to Disallow Costs (APR 1984).
40.	52.243-2.....	Changes—Cost-Reimbursement (AUG 1987). Alternate I (APR 1984).
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43.	52.245-5.....	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
44.	52.246-5.....	Inspection of Services—Cost-Reimbursement (APR 1984).
45.	52.246-25.....	Limitation of Liability—Services (APR 1984).
46.	52.248-1.....	Value Engineering (Over \$100,000) (MAR 1989).
47.	52.249-6.....	Termination (Cost-Reimbursement) (MAY 1986).
48.	52.249-14.....	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 4) Clauses

No.	HHSAR clause No.	Title and date
1.	352.201-1.....	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228-70.....	Required Insurance (APR 1984).
3.	352.232-9.....	Withholding of Contract Payments (APR 1984).
4.	352.233-70.....	Litigation and Claims (APR 1984).
5.	352.242-71.....	Final Decisions on Audit Findings (APR 1984).
6.	352.270-5.....	Key Personnel (APR 1984).
7.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACT**Clauses Incorporated By Reference**

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4.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
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6.	52.215-2.....	Audit—Negotiation (APR 1988).
7.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
8.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
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10.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
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14.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
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16.	52.222-20.....	Walsh-Healey Public Contracts Act (APR 1984).
17.	52.222-26.....	Equal Opportunity (APR 1984).
18.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1)—Continued

No.	FAR clause No.	Title and date
19.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
20.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
21.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
22.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
23.	52.223-6.....	Drug-Free Workplace (MAR 1989).
24.	52.227-1.....	Authorization and Consent (APR 1984)—Alternate I (APR 1984).
25.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
26.	52.227-11.....	Patent Rights—Retention by the Contractor (Short Form) (APR 1984) Note: In accordance with FAR 27.303(a)(2), paragraph is modified to include the requirements in FAR 27.303(a)(2) (i) through (v). The frequency of reporting in (i) is annual.
27.	52.227-14.....	Rights in Data—General (JUN 1987).
28.	52.227-16.....	Additional Data Requirements (JUN 1987).
29.	52.229-5.....	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (APR 1984).
30.	52.232-2.....	Payments Under Fixed-Price Research and Development Contracts (APR 1984).
31.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
32.	52.232-17.....	Interest (APR 1984).
33.	52.232-23.....	Assignment of Claims (JAN 1986).
34.	52.232-25.....	Prompt Payment (APR 1989).
35.	52.233-1.....	Disputes (APR 1984).
36.	52.233-3.....	Protest After Award (JUN 1985).
37.	52.243-1.....	Changes—Fixed-Price (AUG 1987) Alternate V (APR 1984).
38.	52.244-1.....	Subcontracts (Fixed-Price Contracts) (Over \$500,000) (JAN 1986).
39.	52.244-5.....	Competition in Subcontracting (APR 1984).
40.	52.246-16.....	Responsibility for Supplies (APR 1984).
41.	52.249-2.....	Termination for Convenience of the Government (Fixed-Price) (APR 1984).
42.	52.246-23.....	Limitation of Liability (APR 1984).
43.	52.249-9.....	Default (Fixed-Price Research and Development) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984).
2.	352.232-9.....	Withholding of Contract Payments (APR 1984).
3.	352.270-4.....	Pricing of Adjustments (APR 1984).
4.	352.270-7.....	Paperwork Reduction Act (APR 1984).

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This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
5.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
6.	52.215-2.....	Audit—Negotiation (APR 1988).
7.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
8.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
9.	52.215-33.....	Order of Precedence (JAN 1986).
10.	52.216-7.....	Allowable Cost and Payment (APR 1984).
11.	52.216-8.....	Fixed Fee (APR 1984).
12.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
13.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
14.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
15.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
16.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
17.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
18.	52.222-20.....	Walsh-Healey Public Contracts Act (APR 1984).
19.	52.22-26.....	Equal Opportunity (APR 1984).
20.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
21.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
22.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
23.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
24.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
25.	52.223-6.....	Drug-Free Workplace (MAR 1989).
26.	52.227-1.....	Authorization and Consent (APR 1984). Alternate I (APR 1984).
27.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
28.	52.227-11.....	Patent Rights—Retention by the Contractor (Short Form) (APR 1984) Note: In accordance with FAR 27.303(a)(2), paragraph (f) is modified to include the requirements in FAR 27.303(a)(2) (i) through (v). The frequency of reporting in (i) is annual.
29.	52.227-14.....	Rights in Data—General (JUN 1987).
30.	52.227-16.....	Additional Data Requirements (JUN 1987).
31.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
32.	52.232-17.....	Interest (APR 1984).
33.	52.232-20.....	Limitation of Cost (APR 1984).
34.	52.232-23.....	Assignment of Claims (JAN 1986).
35.	52.232-25.....	Prompt Payment (APR 1989).
36.	52.233-1.....	Disputes (APR 1984).
37.	52.233-3.....	Protest After Award (JUN 1985) Alternate I (JUN 1985).
38.	52.242-1.....	Notice of Intent to Disallow Costs (APR 1984).
39.	52.243-2.....	Changes—Cost-Reimbursement (Aug 1987). Alternate V (APR 1984).
40.	52.244-2.....	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
41.	52.244-5.....	Competition in Subcontracting (APR 1984).
42.	52.245-5.....	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
43.	52.246-23.....	Limitation of Liability (APR 1984).
44.	52.249-6.....	Termination (Cost-Reimbursement) (May 1986).
45.	52.249-14.....	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984) (Alternate I (APR 1984).
2.	352.228-70.....	Required Insurance (APR 1984).
3.	352.232-9.....	Withholding of Contract Payments (APR 1984).
4.	352.233-70.....	Litigation and Claims (APR 1984).
5.	352.242-71.....	Final Decisions on Audit Findings (APR 1984).
6.	352.270-5.....	Key Personnel (APR 1984).
7.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A SEALED BID SUPPLY CONTRACT**Clauses Incorporated by Reference**

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-6.....	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
6.	52.214-26.....	Audit-Sealed Bidding (Over \$100,000) (APR 1985).
7.	52.214-27.....	Price Reduction for Defective Cost of Pricing Data—Modifications—Sealed Bidding (Over \$100,000) (APR 1988).
8.	52.214-28.....	Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Over \$100,000) (APR 1985).
9.	52.214-29.....	Order of Precedence—Sealed Bidding (JAN 1986).
10.	52.215-26.....	Integrity of Unit Prices (APR 1987).
11.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984) Alternate I (APR 1984).
13.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
17.	52.222-20.....	Walsh-Healey Public Contracts Act (APR 1984).
18.	52.222-26.....	Equal Opportunity (APR 1984).
19.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
20.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
24.	52.223-6.....	Drug-Free Workplace (MAR 1989).
25.	52.227-1.....	Authorization and Consent (APR 1984).
26.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
27.	52.227-3.....	Patent Indemnity (APR 1984).
28.	52.229-3.....	Federal, State, and Local Taxes (APR 1984).
29.	52.229-5.....	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (APR 1984).
30.	52.232-1.....	Payments (APR 1984).
31.	52.232-8.....	Discounts for Prompt Payment (APR 1989).
32.	52.232-9.....	Limitation of Withholding of Payments (APR 1984).
33.	52.232-11.....	Extras (APR 1984).
34.	52.232-17.....	Interest (APR 1984).
35.	52.232-23.....	Assignment of Claims (JAN 1986).
36.	52.232-25.....	Prompt Payment (APR 1989).
37.	52.233-1.....	Disputes (APR 1984).
38.	52.233-3.....	Protest After Award (JUN 1985).
39.	52.243-1.....	Changes-Fixed-Price (Aug 1987).
40.	52.244-1.....	Subcontracts (Fixed-Price Contracts) (Over \$500,000) (JAN 1986).
41.	52.245-2.....	Government Property (Fixed-Price Contracts) (APR 1984).
42.	52.246-2.....	Inspection of Supplies-Fixed Price (JUL 1985).
43.	52.246-16.....	Responsibility for Supplies (APR 1984).
44.	52.249-2.....	Termination for Convenience of the Government (Fixed-Price) (APR 1984).
45.	52.249-8.....	Default (Fixed-Price Supply and Service (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date (APR 1984).
1.	352.202-1.....	Definitions (APR 1984).
2.	352-232-9.....	Withholding of Contract Payments (APR 1984).
3.	352.270-4.....	Pricing of Adjustment (APR 1984).
4.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-PLUS-A-FIXED-FEE CONTRACT**Clauses Incorporated by Reference**

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-6.....	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
6.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
7.	52.215-2.....	Audit—Negotiation (APR 1988).
8.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
9.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
10.	52.215-33.....	Order of Precedence (JAN 1986).
11.	52.216-7.....	Allowable Cost and Payment (APR 1984).
12.	52.216-8.....	Fixed Fee (APR 1984).
13.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
14.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
15.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).
16.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
17.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
18.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
19.	52.222-20.....	Walsh-Healey Public Contracts Act (APR 1984).
20.	52.222-26.....	Equal Opportunity (APR 1984).
21.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
22.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
23.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
24.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
25.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
26.	52.223-6.....	Drug-Free Workplace (MAR 1989).
27.	52.227-1.....	Authorization and Consent (APR 1984).
28.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
29.	52.227-3.....	Patent Indemnity (APR 1984).
30.	52.227-14.....	Rights in Data—General (JUN 1987).
31.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
32.	52.232-17.....	Interest (APR 1984).
33.	52.232-20.....	Limitation of Cost (APR 1984).
34.	52.232-23.....	Assignment of Claims (JAN 1986).
35.	52.232-25.....	Prompt Payment (APR 1989).
36.	52.233-1.....	Disputes (APR 1984).
37.	52.233-3.....	Protest After Award (JUN 1985) Alternate I (JUN 1985).
38.	52.242-1.....	Notice of Intent to Disallow Costs (APR 1984).
39.	52.243-2.....	Changes—Cost-Reimbursement (AUG 1987). Alternate II (APR 1984).
40.	52.244-2.....	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
41.	52.244-5.....	Competition in Subcontracting (APR 1984).
42.	52.245-5.....	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
43.	52.246-23.....	Limitation of Liability (APR 1984).
44.	52.248-1.....	Value Engineering (Over \$100,000) (MAR 1989).
45.	52.249-6.....	Termination (Cost-Reimbursement) (May 1986).
46.	52.249-14.....	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and Date
1.	352.202-1.....	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228-70.....	Required Insurance (APR 1984).
3.	352.232-9.....	Withholding of Contract Payments (APR 1984).
4.	352.233-70.....	Litigation and Claims (APR 1984).
5.	352.242-71.....	Final Decisions on Audit Findings (APR 1984).
6.	352.270-5.....	Key Personnel (APR 1984).
7.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT CONTRACT WITH NONPROFIT INSTITUTIONS OTHER THAN EDUCATIONAL INSTITUTIONS

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-7.....	Anti-Kickback Procedure (OCT 1988).
5.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
6.	52.215-2.....	Audit—Negotiation (APR 1988).
7.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
8.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
9.	52.215-33.....	Order of Precedence (JAN 1986).
10.	52.216-11.....	Cost Contract—No Fee (APR 1984).
11.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
13.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
17.	52.222-20.....	Walsh-Healey Public Contracts Act (APR 1984).
18.	52.222-26.....	Equal Opportunity (APR 1984).
19.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontractors (\$1,000,000 or more) (APR 1984).
20.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
24.	52.223-6.....	Drug-Free Workplace (MAR 1989).
25.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
26.	52.227-11.....	Patent Rights—Retention by the Contractor (Short Form) (APR 1984) Note: In accordance with FAR 27.303(a)(2), paragraph (f) is modified to include the requirements in FAR 27.303(a)(2) (i) through (v). The frequency of reporting in (i) is annual.
27.	52.227-14.....	Rights in Data—General (JUN 1987).
28.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
29.	52.232-20.....	Limitation of Cost (APR 1984).
30.	52.232-23.....	Assignment of Claims (JAN 1986).
31.	52.232-25.....	Prompt Payment (APR 1989).
32.	52.233-1.....	Disputes (APR 1984).
33.	52.233-3.....	Protest After Award (JUN 1985) Alternate I (JUN 1985).
34.	52.242-1.....	Notice of Intent to Disallow Costs (APR 1984).
35.	52.243-2.....	Changes—Cost-Reimbursement (AUG 1987). Alternate V (APR 1984).
36.	52.244-2.....	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
37.	52.244-5.....	Competition in Subcontracting (APR 1984).
38.	52.245-5.....	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986) Alternate I (JUL 1985).
39.	52.248-1.....	Value Engineering (Over \$100,000) (MAR 1989).
40.	52.246-23.....	Limitation of Liability (APR 1984).
41.	52.249-5.....	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR CHAPTER 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.216-7.....	Allowable Cost and Payment (APR 1984).
3.	352.228-70.....	Required Insurance (APR 1984).
4.	352.232-9.....	Withholding of Contract Payments (APR 1984).
5.	352.233-70.....	Litigation and Claims (APR 1984).
6.	352.242-71.....	Final Decisions on Audit Findings (APR 1984).
7.	352.249-14.....	Excusable Delays (APR 1984).
8.	352.270-5.....	Key Personnel (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR CHAPTER 3) Clauses—Continued

No.	HHSAR clause No.	Title and date
9.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT CONTRACT WITH EDUCATIONAL INSTITUTIONS

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
5.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
6.	52.215-2.....	Audit—Negotiation (APR 1988).
7.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
8.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
9.	52.215-33.....	Order of Precedence (JAN 1986).
[Paragraph (a) of the following clause is modified to delete the words "Subpart 31.2" and to add the words "Subpart 31.3".]		
10.	52.216-7.....	Allowable Cost and Payment (APR 1984).
11.	52.216-11.....	Cost Contract—No Fee (APR 1984) Alternate I (APR 1984).
12.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
13.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
14.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).
15.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
16.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
17.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
18.	52.222-26.....	Equal Opportunity (APR 1984).
19.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
20.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1986).
23.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
24.	52.223-6.....	Drug-Free Workplace (MAR 1989).
25.	52.227-1.....	Authorization and Consent (APR 1984) Alternate I (APR 1984).
26.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
27.	52.227-11.....	Patent Rights—Retention by the Contractor (Short Form) (APR 1984) Note: In accordance with FAR 27.303(a)(2), paragraph (f) is modified to include the requirements in FAR 27.303(a)(2) (i) through (v). The frequency of reporting in (i) is annual.
28.	52.227-14.....	Rights in Data—General (JUN 1987) Alternate IV (JUN 1987).
29.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
30.	52.232-20.....	Limitation of Cost (APR 1984).
31.	52.232-23.....	Assignment of Claims (JAN 1986).
32.	52.232-25.....	Prompt Payment (APR 1989).
33.	52.233-1.....	Disputes (APR 1984).
34.	52.233-3.....	Protest After Award (JUN 1985) Alternate I (JUN 1985).
35.	52.242-1.....	Notice of Intent to Disallow Costs (APR 1984).
36.	52.244-2.....	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
37.	52.244-5.....	Competition in Subcontracting (APR 1984).
38.	52.245-5.....	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986) Alternate I (JUL 1985).
39.	52.246-23.....	Limitation of Liability (APR 1984).
40.	52.249-5.....	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228-70.....	Required Insurance (APR 1984).
3.	352.232-9.....	Withholding of Contract Payments (APR 1984).
4.	352.233-70.....	Litigation and Claims (APR 1984).
5.	352.242-71.....	Final Decisions on Audit Findings (APR 1984).
6.	352.249-14.....	Excusable Delays (APR 1984).
7.	352.270-5.....	Key Personnel (APR 1984).
8.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A TIME-AND MATERIAL OR A LABOR-HOUR CONTRACT**Clauses Incorporated By Reference**

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
5.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
6.	52.215-2.....	Audit—Negotiation (APR 1984).
7.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1984).
8.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1984).
9.	52.215-33.....	Order of Precedence (JAN 1986).
10.	52.216-7.....	Allowable Cost and Payment (APR 1984).
11.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
13.	52.219-13.....	Utilization of Women-Owned Small Business (AUG 1986).
14.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
17.	52.222-20.....	Walsh-Healey Public Contracts Act (APR 1984).
18.	52.222-26.....	Equal Opportunity (APR 1984).
19.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
20.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1986).
23.	52.223-2.....	Clear Air and Water (Over \$100,000) (APR 1984).
24.	52.223-6.....	Drug-Free Workplace (MAR 1989).
25.	52.227-1.....	Authorization and Consent (APR 1984).
26.	52.227-14.....	Rights in Data—General (JUN 1987).
27.	52.232-7.....	Payments Under Time-and-Materials and Labor-Hour Contracts (APR 1984).
28.	52.232-9.....	Limitation on Withholding of Payments (APR 1984).
29.	52.232-17.....	Interest (APR 1984).
30.	52.232-23.....	Assignment of Claims (JAN 1986).
31.	52.232-25.....	Prompt Payment (APR 1984).
32.	52.233-1.....	Disputes (APR 1984).
33.	52.233-3.....	Protest After Award (JUN 1985) Alternate I (JUN 1985).
34.	52.242-1.....	Notice of Intent to Disallow Costs (APR 1984).
35.	52.243-3.....	Changes—Time-and-Materials or Labor-Hours (AUG 1987).
36.	52.244-3.....	Subcontractors (Time-and-Materials and Labor-Hour Contracts) (APR 1984).
37.	52.245-5.....	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
38.	52.246-6.....	Inspection—Time-and-Material and Labor-Hour (JAN 1986).
39.	52.248-1.....	Value Engineering (Over \$100,000) (MAR 1989).
40.	52.249-6.....	Termination (Cost-Reimbursement) (MAY 1986) Alternate IV (APR 1984).
41.	52.249-14.....	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	FAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.226-70.....	Required Insurance (APR 1984).
3.	352.232-9.....	Withholding of Contract Payments (APR 1984).
4.	352.233-70.....	Litigation and Claims (APR 1984).
5.	352.242-71.....	Final Decisions on Audit Findings (APR 1984).
6.	352.270-5.....	Key Personnel (APR 1984).
7.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A SEALED BID CONSTRUCTION CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
5.	52.212-12.....	Suspension of Work (APR 1984).
6.	52.214-26.....	Audit—Sealed Bidding (Over \$100,000) (APR 1985).
7.	52.214-27.....	Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (Over \$100,000) (APR 1988).
8.	52.214-28.....	Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Over \$100,000) (APR 1985).
9.	52.214-29.....	Order of Precedence—Sealed Bidding (JAN 1986).
10.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
11.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$1,000,000) (APR 1984) Alternate I (APR 1984).
12.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).
13.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
14.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
15.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
16.	52.222-3.....	Convict Labor (APR 1984).
17.	52.222-4.....	Contract Work Hours and Safety Standards Act—Overtime Compensation (MAR 1986).
18.	52.222-6.....	Davis-Bacon Act (FEB 1988).
19.	52.222-7.....	Withholding of Funds (FEB 1988).
20.	52.222-8.....	Payrolls and Basic Records (FEB 1988).
21.	52.222-9.....	Apprentices and Trainees (FEB 1988).
22.	52.222-10.....	Compliance With Copeland Act Requirements (FEB 1988).
23.	52.222-11.....	Subcontracts (Labor Standards) (FEB 1988).
24.	52.222-12.....	Contract Termination—Debarment (FEB 1988).
25.	52.222-13.....	Compliance With Davis-Bacon and Related Act Regulations (FEB 1988).
26.	52.222-14.....	Disputes Concerning Labor Standards (FEB 1988).
27.	52.222-15.....	Certification of Eligibility (FEB 1988).
28.	52.222-26.....	Equal Opportunity (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
29.	52.222-27.....	Affirmative Action Compliance Requirements for Construction (APR 1984).
30.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
31.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
32.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
33.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
34.	52.223-6.....	Drug-Free Workplace (MAR 1989).
35.	52.225-5.....	Buy American Act—Construction Materials (APR 1984).
36.	52.227-1.....	Authorization and Consent (APR 1984).
37.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
38.	52.227-4.....	Patent Indemnity—Construction Contracts (APR 1984).
39.	52.228-1.....	Bid Guarantee (APR 1984).
40.	52.228-2.....	Additional Bond Security (APR 1984).
41.	52.228-5.....	Insurance—Work on a Government Installation (APR 1984).
42.	52.232-5.....	Payments Under Fixed-Price Construction Contracts (APR 1989).
43.	52.232-17.....	Interest (APR 1984).
44.	52.232-23.....	Assignment of Claims (JAN 1896).
45.	52.232-27.....	Prompt Payment for Construction Contracts (APR 1989).
46.	52.233-1.....	Disputes (APR 1984).
47.	52.233-3.....	Protest After Award (JUN 1985).
48.	52.236-1.....	Performance of Work by the Contractor (Over \$1,000,000) (APR 1984).
49.	52.236-2.....	Differing Site Conditions (APR 1984).
50.	52.236-3.....	Site Investigations and Conditions Affecting the Work (APR 1984).
51.	52.236-5.....	Material and Workmanship (APR 1984).
52.	52.236-6.....	Superintendence by the Contractor (APR 1984).
53.	52.236-7.....	Permits and Responsibilities (APR 1984).
54.	52.236-8.....	Other Contracts (APR 1984).
55.	52.236-9.....	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (APR 1984).
56.	52.236-10.....	Operations and Storage Areas (APR 1984).
57.	52.236-11.....	Use and Possession Prior to Completion (APR 1984).
58.	52.236-12.....	Cleaning Up (APR 1984).
59.	52.236-13.....	Accident Prevention (APR 1984).
60.	52.236-14.....	Availability and Use of Utility Services (APR 1984).
61.	52.236-15.....	Schedules for Construction Contracts (APR 1984).
62.	52.236-17.....	Layout of Work (APR 1984).
63.	52.236-21.....	Specifications and Drawings for Construction (APR 1984) Alternate I (APR 1984).
64.	52.243-4.....	Changes (Aug 1987).
65.	52.244-1.....	Subcontracts (Fixed-Price Contracts) (Over \$500,000) (JAN 1986).
66.	52.245-2.....	Government Property (Fixed Price Contracts) (APR 1984).
67.	52.246-12.....	Inspection of Construction (JUL 1986).
68.	52.248-3.....	Value Engineering—Construction (\$100,000 or more) (MAR 1989).
69.	52.249-2.....	Termination for Convenience of the Government (Fixed-Price) (APR 1984) Alternate I (APR 1984).
70.	52.249-10.....	Default (Fixed-Price Construction) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984) (Paragraph (e) of the clause is deleted).
2.	352.232-9.....	Withholding of Contract Payments (APR 1984).
3.	352.270-4.....	Pricing of Adjustments (APR 1984).
4.	352.270-7.....	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE ARCHITECT-ENGINEER CONTRACT**Clauses Incorporated By Reference**

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1.....	Officials Not to Benefit (APR 1984).
2.	52.203-3.....	Gratuities (APR 1984).
3.	52.203-5.....	Covenant Against Contingent Fees (APR 1984).
4.	52.203-7.....	Anti-Kickback Procedures (OCT 1988).
5.	52.212-12.....	Suspension of Work (APR 1984).
6.	52.215-1.....	Examination of Records by Comptroller General (APR 1984).
7.	52.215-2.....	Audit—Negotiation (APR 1988).
8.	52.215-22.....	Price Reduction for Defective Cost or Pricing Data (Over \$100,000) (APR 1988).
9.	52.215-24.....	Subcontractor Cost or Pricing Data (Over \$100,000) (APR 1985).
10.	52.215-33.....	Order of Precedence (JAN 1986).
11.	52.219-8.....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219-9.....	Small Business and Small Disadvantaged Business Subcontracting Plan (Over \$500,000) (APR 1984).
13.	52.219-13.....	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220-1.....	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220-3.....	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222-2.....	Payment for Overtime Premiums (APR 1984).
17.	52.222-3.....	Convict Labor (APR 1984).
18.	52.222-26.....	Equal Opportunity (APR 1984).
19.	52.222-28.....	Equal Opportunity Preaward Clearance of Subcontracts (\$1,000,000 or more) (APR 1984).
20.	52.222-35.....	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222-36.....	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222-37.....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223-2.....	Clean Air and Water (Over \$100,000) (APR 1984).
24.	52.223-6.....	Drug-Free Workplace (MAR 1989).
25.	52.227-1.....	Authorization and Consent (APR 1984).
26.	52.227-2.....	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
27.	52.227-17.....	Rights in Data—Special Works (JUN 1987).
28.	52.232-10.....	Payments Under Fixed-Price Architect-Engineer Contracts (AUG 1987).
29.	52.232-17.....	Interest (APR 1984).
30.	52.232-23.....	Assignment of Claims (JAN 1986).
31.	52.232-26.....	Prompt Payment for Fixed-Price Architect-Engineer Contracts (APR 1989).
32.	52.233-1.....	Disputes (APR 1984).
33.	52.233-3.....	Protests After Award (JUN 1985) Alternate I (JUN 1985).
34.	52.236-22.....	Design Within Funding Limitations (APR 1984).
35.	52.236-23.....	Responsibility of the Architect-Engineer Contractor (APR 1984).
36.	52.236-24.....	Work Oversight in Architect-Engineer Contracts (APR 1984).
37.	52.236-25.....	Requirements for Registration of Designers (APR 1984).
38.	52.243-1.....	Changes—Fixed-Price (AUG 1987) Alternate III (APR 1984).
39.	52.244-4.....	Subcontractors and Outside Associates and Consultants (APR 1984).
40.	52.249-7.....	Termination (Fixed-Price Architect-Engineer) (APR 1984).

I. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1.....	Definitions (APR 1984) (Paragraph (e) of the clause is deleted.).
2.	352.232-9.....	Withholding of Contract Payments (APR 1984).
3.	352.270-4.....	Pricing of Adjustments (APR 1984).
4.	352.270-7.....	Paperwork Reduction Act (APR 1984).

Proposed Rules

Federal Register

Vol. 54, No. 121

Monday, June 26, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-118]

7 CFR Part 318

Sharwil Avocados From Hawaii; Interstate Movement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening and extension of comment period for proposed rule.

SUMMARY: In a document published in the Federal Register on March 7, 1989, we proposed to amend the Hawaiian Fruits and Vegetables regulations to allow interstate movement pursuant to certificates of untreated Sharwil avocados from Hawaii to any destination. In response to requests from commenters, we are reopening and extending the comment period on the proposed rule.

DATES: Consideration will be given only to comments received on or before July 3, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-092. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Griffin, Staff Officer, Port Operations, PPQ, APHIS, USDA, Room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION: The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR 318.13

through 318.13-17 and referred to below as the regulations), among other things, govern the interstate movement from Hawaii of avocados in a raw or unprocessed state. Regulation is necessary to prevent spread of the Mediterranean fruit fly (*Ceratitidis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies, commonly referred to as "Trifly," infest Hawaii but not the rest of the United States.

On March 7, 1989, we published in the Federal Register (54 FR 9453-9455, Docket No. 87-092) a proposal to amend the regulations to allow interstate movement pursuant to certificates of untreated Sharwil avocados from Hawaii to any destination based on compliance with certain harvesting and handling provisions. The proposal solicited comments postmarked or received by May 8, 1989. We subsequently published two other Federal Register documents on May 1, 1989 (54 FR 18528-18529, Docket No. 89-065), and May 16, 1989 (54 FR 21069-21070, Docket No. 89-087), that announced a public hearing, held on June 1, 1989, and reopened and extended the comment period to consider comments received by June 19, 1989.

In response to requests from commenters we are reopening and extending the comment period on the proposed rule until July 3, 1989. The new deadline will give interested persons additional time to prepare comments.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington DC, this 20th day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15021 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 352

[Docket No. 88-214]

Avocados From Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Quarantine Safeguard

Regulations by adding Galveston, Texas, to the list of ports through which avocados from Mexico may be moved. We believe this action is warranted to allow avocados from Mexico to transit the United States through Galveston, Texas. This action would give shippers the alternative of importing and exporting Mexican avocados from the port at Galveston, Texas, instead of transporting them to the port at Houston, Texas. It would also slightly enlarge the corridor through which avocados would be allowed to transit the United States.

DATE: Consideration will be given only to comments received on or before August 25, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-214. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR Part 352 (the regulations) provide requirements applicable to most plants, plant products, and related articles, including avocados from Mexico, that are moved through the United States for export. These requirements include permits, notice of arrival, marking requirements, ports of arrival, inspections, safeguards, carriers, and routes of travel through the United States.

Section 352.29 provides specific requirements for avocados from Mexico, and restricts the ports through which they may enter to the following: Houston, Texas; the border ports of Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas; Nogales, Arizona; and those ports within the area

of the United States that is bounded on the west and south by a line extending from El Paso, Texas, to Salt Lake City, Utah, to Portland, Oregon, and due west from Portland, and on the east and south by a line extending from Brownsville, Texas, to Houston, Texas, to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville. These boundaries were established in the regulations to protect plants and plant products in the United States from the avocado seed weevil, the avocado seed moth, and the Mexican fruit fly, which are hosted by avocados and are widely distributed in Mexico. The Mexican fruit fly is a serious pest of many kinds of fruits that are grown in the United States, including almost all varieties of citrus, and would present a significant pest risk to many U.S. crops. These pests could become established in the southeastern and western United States and would pose a significant pest risk in areas of the United States where host fruits are commercially grown.

We have received requests from shipping companies that transport Mexican avocados to add Galveston, Texas, to the list of ports in § 352.29(b) through which these avocados may transit the United States. The shippers desire to use the port at Galveston as an alternative to Houston, Texas, which is located approximately 40 miles northwest of Galveston, since many of the ships that could be used to transport avocados are loaded at the port of Galveston.

We have studied the pest risk attendant to allowing the movement of avocados from Mexico through Galveston, Texas, and we have determined that there would be no increased risk to plants and plant products in the United States if this movement were allowed. First, the avocados would move through the United States under Customs bond, as set forth under § 352.29(e), and in accordance with the applicable safeguard provisions of Part 352 and the requirements set forth in § 352.29. Second, avocados are a poor host for the Mexican fruit fly, and because avocados are not commercially grown in the Galveston/Houston area, there would be no additional pest risk. Third, the prevailing climate in Galveston is inhospitable to the plant pests hosted by avocados and they would be unlikely to survive long enough to pose a pest risk.

Based upon our analysis, we believe that allowing shippers to move Mexican avocados within the same region of Texas to a port 40 miles southeast of Houston would not increase the risk of

introducing plant pests into areas of the United States that would be endangered by those pests.

Section 352.29(f) of the regulations would be revised to reflect that the eastern and southern boundary of the area through which avocados from Mexico may transit the United States would be bounded by a line extending from Brownsville, Texas, to Galveston, Texas (instead of Houston, Texas), to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If implemented, the proposed rule would allow avocados from Mexico to be transported through the port of Galveston, Texas, in accordance with safeguard provisions of Part 352, for export to third countries. Persons involved in this process include the avocado owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on small entities would be limited to small increases or decreases to shipping costs paid by the avocado owners or exporters.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.).

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Postal Service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR Part 352 would be amended as follows:

1. The authority citation for Part 352 would continue to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.29 [Amended]

2. In § 352.29(b), the words "Galveston or" would be added immediately following the words "only at the following ports:"

3. In § 352.29(f), the words "Houston, Texas," would be removed and the words "Galveston, Texas," would be added in their place.

Done in Washington, DC, this 20th day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15022 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A39; DA-85-047]

Milk in the Southern Michigan Marketing Area; Decision on Proposed Amendment to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision changes the plant location adjustments to prices under the Southern Michigan order. The amendments were proposed by four dairy farmer cooperatives that supply about 87 percent of the market's milk.

The changes would replace the current seven pricing zones with just three zones (zero, minus five cents, and minus seven cents) and increase the rate of adjustment at plants outside the zones from one cent to 2.25 cents per hundredweight per 10 miles or fraction

thereof. The zone and location adjustments apply to Class I milk prices to handlers and to uniform prices to producers.

Also, a larger direct-delivery differential payment of 10 cents per hundredweight would be required for milk delivered to pool plants in a three-county area (metropolitan Detroit). Currently, two rates are applicable in portions of two counties.

Another change would use 0.115 rather than 0.113 as the factor that is multiplied times a specified butter price to determine the butterfat differential used for pricing milk under the order.

The amendments are based on industry proposals and a record of a public hearing held at Romulus, Michigan, on May 24, 1988. The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the Southern Michigan marketing area. Cooperative associations will be polled to determine whether producers favor issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued April 29, 1988; published May 4, 1988 (53 FR 15851).

Extension of Time for Filing Briefs: Issued July 19, 1988; published July 22, 1988 (53 FR 27699).

Recommended Decision: Issued February 21, 1989; published February 24, 1989 (54 FR 7938).

Correction to Recommended Decision: published March 10, 1989 (54 FR 10214).

Extension of Time for Filing Exceptions: Issued March 16, 1989; published March 21, 1989 (54 FR 11545).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR Part 900), at Romulus, Michigan, on May 24, 1988. Notice of such hearing was issued on April 29, 1988 and published May 4, 1988 (53 FR 15851).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on February 21, 1989, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1. Changing the location adjustment and direct-delivery differential zones in the order," seventeen new paragraphs are added after paragraph 74.

2. Under the heading "2. The location adjustment rate applicable to plants located outside location adjustment zones,":

a. Two new paragraphs are added after paragraph 32.

b. Eight new paragraphs are added after paragraph 41.

The material issues on the record of the hearing relate to:

1. Changing the location adjustments and direct-delivery differential zones in the order.

2. Changing the rate used to determine location adjustments at locations outside the zoned area.

3. Changing the factor used in the computation of the butterfat differential.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Changing the location adjustment and direct-delivery differential zones in the order.* The order should be amended to provide a single direct-delivery zone and three zones for pricing milk at Class I and uniform prices.

The Producers' Equalization Committee (PEC) proposed changing the structure of the existing pricing zones and direct-delivery differential zones.

The PEC is composed of four cooperative associations, namely Independent Cooperative Milk Producers Association, Michigan Milk Producers Association (MMPA), National Farmers Organization, and Southern Milk Sales. Together, these four associations market approximately 87 percent of the milk pooled on Order 40 and supply about 87 percent of the market's fluid milk sales.

The PEC proposed that the present seven zones, all in the lower portions of Michigan, be replaced with three zones.

The lower portion of Michigan is currently divided into seven geographically specified zones consisting of bands of counties grouped essentially on the basis of distance from the heavily populated corridor which encompasses Detroit, Flint and Bay City.

The above pricing structure has been in effect for the Southern Michigan market since September 1, 1977. The Class I price to handlers and the uniform price to producers is adjusted as follows.

Zone	Adjustment
1	No adjustment.
2	Minus 5 cents.
3	Minus 7 cents.
4	Minus 9 cents.
5	Minus 11 cents.
6	Minus 14 cents.
7	Minus 17 cents.

The PEC proposed that the lower portion of Michigan be comprised of three zones, as follows: Zone 1, a large southeastern segment, would contain the counties of Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw, Wayne, and Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser townships).

Zone 2, a large southwestern segment, would include Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph, and Van Buren Counties; and

Zone 3, north of Zones 1 and 2, would be comprised of Bay County (all townships excluded from Zone 1), and the counties of Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

The Class I prices to handlers and the uniform price to producers would be adjusted as follows:

Zone	Adjustment
1	No adjustment.
2	Minus 5 cents.
3	Minus 7 cents.

The PEC also proposed expanding the area in which the direct-delivery differential is applicable from two counties (Wayne and Oakland Counties) to include Macomb County. The rate of the direct-delivery differential would be 10 cents in all three counties. At the present time, a 10-cent rate applies to milk received at pool plants in Wayne County and parts of Oakland County. A 4-cent rate presently applies to most of Oakland County.

Also proposed by the PEC was a proposal to increase the location adjustment rate from one cent to 2.25 cents applicable at plants located outside the marketing area. Both the direct-delivery differential and the location adjustment rate applicable to distant plants will be discussed following a discussion dealing with the restructuring of the present location adjustment zones.

A witness for the PEC testified that the proposed changes to the pricing structure of the Southern Michigan order are necessary because of the substantial changes that have occurred in the past decade. He said that a 21-cent difference (17 cents for Zone 7 plus a 4-cent direct-delivery differential) was created in September 1977 to facilitate the movement of milk from western Michigan to southeast Michigan. Also a 27-cent difference was created at that time (17 cents for Zone 7 plus a 10-cent direct-delivery differential) to move milk from northern Michigan to southeast Michigan. In 1977, he said, these differences in prices fairly reflected the cost of transporting milk to a market (Detroit metropolitan area) that was considered to be a deficit production area.

The PEC spokesman said that packaged milk sales by handlers located in the proposed Zone 1 (21 counties) was approximately 156.0 million pounds and that milk production for this same area was about 160 million pounds. He said that handlers also require milk for non-fluid milk products such as cottage cheese and yogurt. This 21-county area in 1977, he said, included four supply plants at Adrian, Ovid, Chesaning and Sebawaing, Michigan, which processed reserve milk supplies for Class III products.

The witness for the PEC said that the period from 1977 to 1987 can be described as a period of deteriorating packaged fluid milk sales by Order 40 pool plants. Fluid milk sales for this period, he said, decreased from approximately 2.218 billion pounds per year to 1.976 billion pounds or a decrease of 242 million pounds.

Proponent's spokesman testified that this decline in sales can be attributed to a depressed economy, declining population, and declining per capita consumption. Local plants today, he said, are not distributing fluid milk products into as many distant markets as in the past.

The witness for the PEC said that the distribution of fluid milk sales within Southern Michigan has also changed. Exhibit No. 9, for example, shows that in 1977, plants located in the two counties where the direct-delivery differential applies, accounted for 57 percent of Order 40's sales. Plants located within the present base zone and the minus 5-cent zone accounted for 25 percent of the total sales and the balance of sales (18 percent) were by plants in the minus 9-cent, minus 11-cent and beyond zones. By December 1987, he said, for these same zones, the percentages were 41, 27 and 32, respectively.

Proponent's witness testified that during this 10-year period, annual sales volume in the area now comprising the plus 10-cent direct-delivery differential declined by 445 million pounds whereas sales in the minus 9-cent and beyond zones increased by 217 million pounds resulting in a net loss of 242 million pounds of fluid milk sales for the entire market. He said that this redistribution of the local market's fluid milk sales represents a reversal of the previous trend in sales. Less packaged milk is being supplied to other in-state markets by Detroit metropolitan handlers, via distributors, and more of the packaged sales in the Detroit metropolitan area is being supplied by plants located outside the plus 10-cent direct-delivery differential area. The closing of two large distributing plants during the last 10 years, he said, has also contributed to the reduced fluid milk sales by plants located in the plus 10-cent direct-delivery differential area.

The PEC witness testified that milk production for the entire Southern Michigan market and by county has also changed during the last 10 years. He said that Exhibit 15 shows that for December 1987, milk production in the proposed Zone 1 area was within one percent of the production level of December 1977 and that in the proposed minus 5- and minus 7-cent zones, production had increased 14 percent

when compared to 1977. He indicated that although milk production has remained fairly constant in the counties proposed for Zone 1, the monthly fluid milk needs of this area have decreased by almost 39 million pounds since 1977.

The spokesman for the PEC testified that more of the milk production in the proposed Zone 1 area is available to supply the fluid market today than there was in 1977. In his view, this is because of the closing of two manufacturing plants located in Sebawaing and Chesaning, Michigan. These two facilities, he said, acquired the majority of their milk supply from farms located in the central zone. His belief is that the central zone should no longer be considered a deficit production area and therefore, the spread in prices paid to customers located in different areas of the market should be reduced.

The PEC witness indicated that the change in the location adjustment rates should also be made to more properly align Class I prices between adjoining markets. Furthermore, it is his belief that prices within the market should be aligned to ensure comparable pricing treatment for plants which are similarly located but regulated by another Federal order.

The spokesman for the PEC expressed the view that because of the daily and monthly fluctuation in sales, it is necessary to design location adjustments so that the seasonal and operating reserves of the fluid market can be handled in an efficient manner with the least cost to those producers who are balancing the market.

The PEC witness indicated that the location adjustment rate for the proposed Zone 2 of minus 5 cents results in a Class I differential of \$1.70 that applies to regulated handlers in the northern zone of the Indiana market (Order 49). He said that a minus 5-cent location adjustment also more closely aligns the producer uniform prices for Orders 40 and 49 in southwest Michigan. A minus 7-cent location adjustment in Zone 3, he said, recognizes the fact that the plants are located further from the major consumption areas of Lansing, Flint, and Bay City-Saginaw.

The PEC proposal, in the witness' view, would expand the central zone to include the cities of Lansing and Jackson in order to recognize the overlapping of route distribution and the competition for fluid milk sales among plants located in Lansing and Jackson with other plants presently included in the central zone. In his view, a zero location adjustment for Lansing and Jackson better aligns the Class I price among the competing handlers in the local markets and also

better aligns the Order 40 Class I differential at these locations with the Order 33 (Ohio Valley) Class I differential of \$1.80 for northwest Ohio.

The witness for the PEC testified that, in his opinion, the proposed reduction in the location adjustment rates for the more distant zones acknowledges that there is an increasing demand for milk by processing plants located in those areas which were previously considered secondary markets.

The PEC, he said, believes that these location adjustment rates should be designed so that producer supplies will move to plants when needed in the most efficient way. The proposed minus 5-cent location adjustment rate for Zone 2 will provide better inter-market price alignment. Furthermore, the witness said, the historical price relationship between Order 40 and surrounding markets was altered when the Class I differentials were changed pursuant to the Food Security Act of 1985. The PEC proposal, in his view, will result in more equity among fluid milk plants.

On cross-examination the PEC witness stated that this organization is not saying that the cost of transportation is any cheaper today than it was in 1977. He said that milk is not being moved into the central zone on a routine basis from outside this zone. The plants located in the minus 7-cent zone, he said, would have a fairly local procurement area and they do not utilize all the milk produced in the counties that would make up the minus 7-cent zone. Furthermore, he said, some of the milk produced in this area will move either to a fluid milk plant in the central zone or to the minus 5-cent zone or it may move to the MMPA balancing plant at Ovid, Michigan.

The PEC witness on cross-examination testified that the population west of Lansing has grown whereas the population in the Detroit metropolitan area as well as in Flint, Bay City-Saginaw has declined because of their reduced employment associated with the auto industry.

On cross-examination, the spokesman for the PEC indicated that a manufacturing plant under construction at Allendale (Ottawa County) that will be supplied by MMPA, would become operational late in 1989. He said that MMPA will still have a commitment to supply the local fluid milk plants.

The PEC Proposal was supported at the hearing by a witness for the Borden Company that operates a fluid milk plant located at Madison Heights, Michigan. This witness said that the proposal would not affect their costs and that none of their competitors would have their costs lowered.

A witness for Kraft, Inc. (Kraft), testified in opposition to the proposal. He said that Kraft operates supply plants at Pinconning and Clare, Michigan. The Clare plant, he said, now is subject to a minus 11-cent location adjustment and the Pinconning plant currently is subject to a minus 7-cent location adjustment.

The Kraft witness said that the two supply plants qualify as fully regulated supply plants because of the unit system of pooling administered by MMPA. The Pinconning plant, he said, receives milk from nonmember producers, one-third of whom are located in Huron, Tuscola and Sanilac Counties, Michigan, and the remaining two-thirds of the producers are located in counties north of Pinconning. He said the milk supply for the Clare plant comes from the central part of the state from Traverse City to Lansing.

Kraft's witness expressed the view that the current pricing structure of Order 40 reflects the sound principles applied throughout the milk order system such as: (1) The location price for milk should be reduced in direct proportion to the distance from the primary market, (2) the price of milk in major milk production areas should be lower than the price in principal consuming areas and, (3) similar prices should apply to similarly situated handlers.

The witness for Kraft testified that the proposal as it relates to their Pinconning plant would put their plant at a competitive disadvantage. This, he says, is because the producer pay price in Sanilac County would increase by 7 cents in a county where a competing supply plant is located at Marlette that would have a zero location adjustment.

Kraft's witness said that the proposal would do nothing to encourage the movement of milk from Sanilac or Huron Counties to the metropolitan Detroit area. He said that the proposal would discourage such shipments since the price difference between the "thumb" area and the Detroit metropolitan area would be reduced from 17 cents (10 cent direct-delivery differential plus 7 cents) to 10 cents.

The Kraft witness testified that the proposal would eliminate the incentive to move milk from the "thumb" area to distributing plants located at Port Huron, Flint, Saginaw and Bay City. This, he says, is because a zero price difference is proposed between the production area and these plants in contrast to a 7-cent incentive that now exists.

Kraft's witness said that the proposal would provide the MMPA butter-powder plant at Ovid, Michigan, with an ability

(7 cents) to attract milk supplies located in the "thumb" area away from Kraft's Pinconning plant. He said that the proposal will make Kraft the only purchaser of milk in the "thumb" area with a minus location adjustment and that this additional expense of 7 cents will cost Kraft approximately \$33,000 per year.

The witness for Kraft expressed the view that the proposal will be disruptive in the western part of the State between manufacturing plants. He said that in Ottawa County the blend price would increase 6 cents (minus 11 to minus 5 cents) and the impact will apply to a cheese plant being built by Leprino Foods, (Leprino) at Allendale, Michigan (Ottawa County). The plant when completed, he said, will have a capacity to manufacture two- to two-and-a-half million pounds of milk per day and that this price increase of 6 cents on this volume of milk will reduce the pool about \$500,000 per year. Furthermore, he said, the blend price at Allendale would be 2 cents higher than the blend price at Clare. At the present time, he said, the two locations are priced the same. He said that the two cents on the expected volume at Allendale would result in a \$144,000 procurement advantage per year to Leprino.

Kraft's witness said that the proposal is contrary to the historical policy and recent decisions by the Secretary. In his view, the proposal does less to reflect the cost of transporting milk from the production areas to the consuming areas than do the current provisions of the order. He said that the Secretary should be consistent and not adopt the proposal because it would increase prices in the State's major production areas in order to provide a competitive advantage for one manufacturing plant.

At the hearing and in their brief, Lansing Dairy, located at Lansing, Michigan, opposed the PEC proposal. Their spokesman said that transportation costs have gone up in the six counties surrounding Detroit. He said that the proposal would cost their plant about half a cent per gallon and, on their volume of sales, about \$1,500-\$1,600 per week. He said that the proposal will help MMPA's relationship with the Leprino cheese plant at Remus, Michigan, and with the Leprino plant under construction at Allendale.

Frigo Cheese Corporation (Frigo) opposed the proposal. The Frigo witness testified that Frigo operates three supply plants pooled on Order 40 that are located at Carney, Michigan, and at Lena and Wyocena, Wisconsin. He said that Frigo has been associated with Order 40 for over 18 years through the

unit pooling provisions administered by Dean Foods Company (Dean). The witness said that the PEC proposal would be disruptive to producers located in the Upper Peninsula and, therefore, Frigo was proposing a modification to the proposals.

The spokesman for Frigo proposed adding to the PEC proposals two more zones applicable to the Upper Peninsula with fixed location adjustments. He would add a Zone 4 with a minus 20-cent location adjustment and a Zone 5 with a minus 40-cent location adjustment. He said that Zone 4 would include the area outside of the marketing area but located in the Upper Peninsula that contains the counties of Alger, Baraga, Chippewa, Houghton, Keweenaw, Luce, Mackinac, Marquette and Schoolcraft. Zone 5, he said, would include the area outside the marketing area but located in the Upper Peninsula and would include the counties of Delta, Dickinson, Gogebic, Iron, Menominee and Ontonagon. Although offered as a modification of proposal No. 1, this proposal must be considered as more directly related to the PEC proposal to change the rate for computing location adjustments at plants outside the specified zones.

As indicated previously, the PEC proposed adding Macomb County to the area now subject to the direct-delivery differential. The proposed direct-delivery differential rate would be 10 cents and would apply to all of Wayne, Oakland and Macomb Counties.

The PEC witness testified that the proposal would increase the cost to one fluid milk plant located in Novi Township of Oakland County. He said that approximately 20 miles separates the Novi plant that is subject to a plus 4-cent direct-delivery differential from three large fluid milk plants located in the plus 10-cent area and that this minor difference in distance does not justify a 6-cent difference in the location value of producer milk.

The spokesman for the PEC said that the plus 10-cent direct-delivery differential is needed to induce needed milk deliveries to the present plants or any future plant that may be built in this three-county area. This expansion, he says, parallels the extension of the residential Detroit metropolitan area since the order was amended in 1977.

Proponent's witness testified that rapid urban development in Oakland and Macomb Counties has virtually eliminated milk production in these counties. He noted that within a 60-mile radius of the Detroit area, in the counties adjacent to the tri-county area, milk production in December 1977 was

40 million pounds and that by December 1987 milk production within the same radius had decreased to about 35 million pounds.

The PEC witness expressed the view that the direct-delivery differentials for this market have, over time, helped to provide milk supplies for milk plants located in the Detroit metropolitan area. He said that the additional 10 cents still fairly reflects the additional hauling cost paid on the majority of the milk moving to the Detroit area versus the cost of moving milk to other local markets in the central zone.

The changes in the plant location adjustment zones proposed by the PEC should be adopted. These changes will produce a flatter Class I and uniform price structure within the marketing area that will better reflect the need to move less milk under current market conditions. Instead of two direct-delivery zones (plus four cents and plus ten cents) and seven location adjustment zones (ranging from no adjustment to a minus 17 cents adjustment), there should be one direct-delivery zone (plus ten cents) and three location adjustment zones (ranging from zero to minus seven cents).

The current zone pricing structure has been in place since 1977. Since then, numerous changes have occurred in the market that warrant fewer zones and less incentive to move milk toward the Detroit metropolitan area from the outlying production areas. These changes include population shifts, plant closings, and increased milk production.

The metropolitan Detroit area (principally Macomb, Oakland and Wayne Counties) is still the market's largest single population center. However, population in Wayne County declined more than 12 percent (300,000) from July 1976 to July 1986.¹ Although the population in Oakland and Macomb Counties increased during this period, the three-county area combined had 5.5 percent fewer inhabitants as of July 1986 than there were in July 1976. These three counties, which make up the proposed direct-delivery differential zone,

¹ Official notice is taken of the following sources of population data:

Press Release, CB 87-116, released July 24, 1987, by the Bureau of the Census, United States Department of Commerce.

Estimates of the Population of Michigan Counties and Metropolitan Areas: July 1, 1976 (Revised) and 1977 (Provisional), Current Population Reports, Series P-26, No. 77-22, Issued September 1978 by the Bureau of the Census, United States Department of Commerce.

Provisional Estimates of the Population of Counties: July 1, 1986, Current Population Reports, Series P-26, No. 86-A, Issued August 1987 by the Bureau of the Census, United States Department of Commerce.

contained 46.8 percent of the marketing area population in July 1976, but only 44.0 percent in July 1986. The net decline for the three counties combined was more than 225,000 persons.

Data in exhibits show that annual Class I packaged milk dispositions from plants located in the direct-delivery differential zone (Wayne and Oakland Counties—there are no milk plants in Macomb County) declined by 35.5 percent, from 1.255 billion pounds in 1977 to 810.3 million pounds in 1987. The difference, 455.2 million pounds, represents the annual average milk production of nearly 500 Michigan dairy farms in 1987, based on daily deliveries per farm of 2,500 pounds of milk. This number simply serves to emphasize how much less Class I milk is currently used by plants in this zone than was needed ten years ago.

Milk production in the direct-delivery differential zone dropped by over 44 percent (from 4.8 million to 2.6 million pounds) between December 1977 and December 1987. However, within this zone, two large distributing plants have closed. To the extent that there is a need for milk at plants in the direct-delivery differential zone, the 10-cent differential, which is paid directly to producers and therefore is not pooled, is viewed by the supplying cooperatives as adequate to cover the additional cost of delivering milk to plants located in the three-county areas. No one opposed expanding the direct-delivery differential zone to include all three counties and fixing a uniform rate of 10-cents per hundredweight for the direct-delivery differential. The direct-delivery differential has no impact on the pooled value of milk and thus no impact on the uniform price.

The balance of the proposed "zero" zone consists of all or a portion of 18 counties, covering approximately the southeastern one-third of the lower portion of the State of Michigan. In this larger area, population increased slightly (2.2 percent) between 1976 and 1986, while milk production increased 0.8 percent (1.26 million pounds) over the same period of time. This zone includes several population centers, including Flint, Lansing, Saginaw and Bay City, all of which are Metropolitan Statistical Areas (MSA's) as defined by the Bureau of the Census. Two of these MSA's, Flint and Lansing, experienced population declines from 1976 to 1986, while the Saginaw and Bay City area population increased by over 16 percent, or more than 57,000 persons.

The population of the entire zero zone (which includes the direct-delivery differential zone) overall dropped by

2.75 percent (175,200) from 1976 to 1986. Three supply plants and four distributing plants (including the two mentioned earlier in the direct-delivery differential zone) have closed in the zero zone since 1977. Slightly more than 70 percent of the market's population resides in these 21 counties. Plants located in this zone received two-thirds of the market's producer milk in December 1987 and accounted for 68 percent of the market's Class I milk.

Milk produced in the 21-county zero zone and pooled during December 1987 amounted to 158.9 million pounds. Class I sales by plants located in these counties totaled 119.7 million pounds for the same month. Thus, Class I use amounted to about 75 percent of the milk that was produced in these counties. Overall, it appears that there is a good balance between production and Class I use in this area. Nevertheless, there may be some need to attract limited amounts of additional milk to plants in this zone from other zones. To this extent the proposed five cents Class I price difference between Zones 1 and 2, and the seven cents difference between Zones 1 and 3, should be adequate to attract such supplies.

Zone 2, the minus five cents zone, had 21 percent of the marketing area population in July 1986, an increase of 8.5 percent (146,400) from 10 years earlier. Milk production in this area in December 1987 was up about four percent from 10 years earlier. December 1987 pooled milk produced in counties in this zone totaled 102 million pounds, while plants in the zone had Class I uses of about 35 million pounds. Thus, there appears to be plenty of milk to serve this area. The two-cent Class I price difference between Zones 2 and 3 would cover only movements of milk from a short distance into Zone 3.

There are four MSA's in Zone 2. They include Battle Creek, Grand Rapids, Kalamazoo, and Muskegon. Of these, only the Grand Rapids MSA experienced growth from 1976 to 1986. The others declined from 0.1 percent (Muskegon) to 25 percent (Battle Creek). Many of the counties in this proposed zone currently are in a minus nine-cent or minus 11-cent zone. Such lower prices may encourage milk to move to higher-priced areas where it is not now needed.

Another consideration of the proposed five-cent lower Class I price in this zone is that it will improve price alignment with the northern tier of counties in the Indiana Federal milk order. The Class I price differential in the no-adjustment zone of the Indiana order is \$2.00 per hundredweight. However, the four Michigan counties that are in the Indiana Federal order marketing area,

along with other counties in northern Indiana, are in a minus 30-cent location adjustment zone. Under the current Southern Michigan order, the zero adjustment Class I differential is \$1.75 per hundredweight, with location adjustments of minus nine cents and minus 11 cents applicable to plants in Michigan counties along the Michigan-Indiana border. This arrangement results in misalignment of Class I prices between the two orders. Thus, a minus five-cent zone in southwestern Michigan will provide Class I price alignment in the four Michigan counties that are part of the Indiana marketing area.

The third zone proposed, with a minus seven-cent adjustment, is much more a rural area than are the other two zones. On a percentage basis, the population increase in this zone was the largest, showing an 11 percent (75,000) gain from 1976 to 1986. However, the 1986 population of this zone is the smallest, comprising only 8.4 percent of the marketing area's total population. This zone also appears to be self-sufficient with respect to milk supply and demand. In December 1987, pooled milk produced in this zone amounted to 86.7 million pounds. Class I use by plants in this zone and outside the marketing area amounted to 20.4 million pounds.

The counties that comprise this minus seven-cent zone currently are in one of five different zones ranging from minus seven cents to minus 17 cents. Only two distributing plants are located in this zone, one at Cheboygan, which is near the northern tip of the lower peninsula, and one at Evart, which is more nearly in the center of the lower peninsula. Currently, the Cheboygan plant is in the minus 17-cent zone, while the Evart plant is in the minus 11-cent zone.

The record does not reveal the sizes of the two distributing plants in the proposed Zone 3, but an exhibit requested by Kraft, Inc., and prepared by the market administrator indicates that total Class I use by Southern Michigan handlers in all the territory outside proposed Zones 1 and 2 amounted to 20.5 million pounds in December 1987. Thus it is safe to assume that each of the two plants in Zone 3 had less Class I milk than the 20.5 million pounds. It is noted that in December 1987, pooled milk production in the Michigan Counties of Newaygo, Mecosta, Isabella, Gladwin, Clare, Osceola, and Missaukee totaled more than 50 million pounds. Since the plant at Evart is in Osceola County, and the counties just noted are either adjacent to it or nearby, there seems to be no need for a higher price at Evart to attract milk from the Cheboygan area.

The justification for fewer pricing zones is further reinforced by looking at the marketing situation overall. From 1976 to 1986, the population of the lower peninsula grew by only .5 percent, or about 46,000 persons. While the population remained static in size, major changes were going on as population shifts occurred. Some of these have already been noted. At the same time, total Class I packaged milk sales by Southern Michigan order pool handlers actually declined, from about 2,218 million pounds in 1977 to 1,976 million pounds in 1987, a 10.9 percent drop. However, milk production pooled under the order increased by nearly 10.5 percent over the same period. Thus, the percent of available milk used for Class I purposes declined from 53.9 percent in 1977 to 43.4 percent in 1987.

Moreover, Class I sales from plants in the Detroit metropolitan area have declined while sales from plants in more outlying areas have increased. These changes call for eliminating some of the highly structured zone pricing that has been operational since 1977. It is no longer needed.

The opposition by Kraft, Inc. and Lansing Dairy, Inc. has been noted. Lansing Dairy objected because its costs would be increased due to the higher applicable Class I price, which would have a negative economic impact on their operation. Lansing also expressed a view that it was indirectly being asked to subsidize the economic relationship between the cooperative and the Leprino Cheese operations.

Under the changed zone structure, Lansing Dairy will be affected two ways. First, the Class I price under the order at Lansing will be five cents higher than it now is. However, Lansing Dairy is one of four distributing plants in what is now a minus five-cent zone that will be in the new zero zone. Two of the other plants are in Lansing and one is in Jackson. Thus, plants in the same general area will be treated alike and pricing equity among these competing handlers will continue.

Second, Lansing Dairy's witness indicated that the handler procures some milk from independent producers north of Lansing, as far away as McBain in Missaukee County. Currently, the zone price difference between McBain and Lansing is six cents. Under the new structure, it will be seven cents. Thus, there will be greater recovery of hauling costs under the order for the handler's independent producers. This may work to the handler's advantage in procuring milk supplies.

Two proprietary handler supply plants would be similarly affected by the

changes. The Kraft plant at Clare, which is now in a minus 11-cent zone, would be in a minus seven-cent zone. Diehl, Inc., which operates a supply plant in Charlotte, Michigan (Eaton County), now is in a minus seven-cent zone, but will be in a minus five-cent zone. Aside from MMPA's plant in Adrian, the only other supply plant in lower Michigan that will not have a higher blend price at its location is the Kraft plant at Pinconning, Michigan, which is now and will continue to be in a minus seven-cent zone.

Kraft objected to higher blend prices at the MMPA plant at Ovid and the NFO plant at Marlette since its Pinconning plant competes for part of its milk supplies in a common production area. All three plants are now in the same pricing zone. Kraft's principal objection is that it believes it will have to pay its producers the higher blend price that would be applicable at the Marlette plant in order to compete with NFO for milk supplies. Kraft contends that it would have to absorb the price difference of 7 cents per hundredweight, which would amount to about \$33,000 per year. If it does not do this, Kraft implies its producers will look for another buyer.

Kraft further argues (in its brief) that in 1977 it proposed higher prices at a manufacturing plant in Saginaw County and for the Kraft plant in Pinconning for essentially the same reasons that PEC now proposes higher prices at the Marlette and Ovid plants. However, Kraft's proposal was denied. The Kraft brief argues that a higher price (at any plant) cannot now be adopted for the same area without the expression of a reversal of past policy. Kraft, in its brief, asked that Official Notice be taken of the Deputy Assistant Secretary's Interim Final Decision, Docket No. A0-361-A24 et al., published in the Federal Register on July 8, 1986 (51 FR 24677). The requested document involved the issue of appropriate location adjustments in several orders, including Indiana, but not the Southern Michigan order. However, since the request does not indicate how Official Notice of that document would be useful in this proceeding, the request is denied.

In opposing Class I price increases in southwestern Michigan, Kraft points to the fact that the Class I differential at a Kalamazoo County distributing plant under the Indiana order would be \$1.66. Kraft maintains that PEC's proposals do not, as PEC claims, improve price alignment between the Southern Michigan and Indiana orders. Kraft's brief also maintains that the PEC's proposed increase in the blend prices in

southwestern Michigan will tend to encourage milk supplies to remain at manufacturing plants such as the MMPA plant under construction at Allendale (Ottawa County), rather than being delivered to deficit Class I markets. Kraft claims that MMPA admittedly plans to serve the Allendale plant with milk now sold to out-of-area customers.

Kraft's point about alignment of prices between the Southern Michigan and Indiana orders in Kalamazoo County, Michigan, is correct. However, four Michigan counties (Berrien, Cass, St. Joseph, and Branch) and 14 northern Indiana counties are in the minus 30-cent zone of the Indiana order. At plant locations in the four Michigan counties in this pricing zone of the Indiana order, Class I prices would be aligned under PEC's proposal. Kraft's claim that the PEC proposals diminish price alignment is correct at some locations while the PEC's claim that their proposals improve price alignment with Indiana is true at other locations.

Kraft expressed a view that higher Class I prices at plant locations in the proposed base zone and the minus five-cent zone are not needed because the plants are located in major milk producing areas where milk production is more than ample. Kraft holds that such increases will send a signal to producers to increase production. Instead, Kraft's brief suggests that the base zone (no adjustment) price could be lowered since the PEC maintains that there is now less need than there was in prior years to attract milk to Zone 1. However, there were no proposals submitted nor any testimony offered in support of any lowering of the Class I price. Moreover, the price changes are not of sufficient magnitude to have any measurable production response.

With regard to Kraft's concern that the PEC proposal would not result in a higher blend price at its Pinconning plant, the PEC witness indicated that the majority of the "thumb" milk supply is delivered to fluid milk plants in Flint, Port Huron, and Detroit. This certainly indicates that milk from the "thumb" area moves southward and therefore the zero adjustment zone should include the "thumb" counties. On the other hand, the record fails to establish that the Pinconning plant of Kraft has a particular association with the proposed new Zone 1 or that it now serves as a balancing plant for other plants that would be in the proposed new "no-adjustment" zone. While it is true that the plants at Ovid (MMPA), Marlette (NFO) and Pinconning (Kraft) have been in the same zone since at least 1977, there is no basis in the record to

conclude that Pinconning should be included in the new no-adjustment zone along with the other two plants at Ovid and Marlette.

It also should be noted that Kraft's plant at Clare will be in the same pricing zone as MMPA's plant at Remus. Currently, the Remus plant is in the minus 9-cent zone while the Clare plant is in the minus 11-cent zone. In this case, Kraft's ability to compete for milk supplies should be improved.

Finally, the change from seven pricing zones to three pricing zones is not tied to the cost of moving milk. Transportation costs were the main consideration when the current zone structure was adopted in 1977. Given the changes that have occurred since then, the new pricing structure will reflect three basically self-sufficient pricing zones with recognition that some limited movements of milk between zones may be needed. Also, these changed zones allow the cooperatives that operate market-balancing manufacturing facilities an opportunity to operate those plants without being unduly influenced by differences in location adjustments.

Exceptions to the recommended decision on this issue were filed by Kraft and Lansing Dairy. Kraft also asked that the hearing be reopened because of the closing of the Kraft plant at Clare, Michigan, and because of what they perceive as a change in the Department's policy on Class I pricing subsequent to the close of the hearing.

Kraft in its exceptions, has characterized the Secretary's decision to reduce the minus location adjustments in several zones as raising the minimum Class I price. Kraft cites the statutory language of section 8c (18) of the Agricultural Marketing Agreement Act of 1937 (Act). In Kraft's view, the Act permits the Secretary to raise milk prices in a market or at a location when the current price is inadequate to attract "a sufficient quantity of pure and wholesome milk" to meet fluid needs. Section 8c (18), in their view, does not permit a minimum price increase where uncontroverted evidence establishes, and the Secretary finds, that the current supply is more than adequate to meet fluid needs.

The Class I differential, which is established at the base or "zero" zone, is \$1.75, and would not be changed. Section 8c(18) is the authority for the Secretary to change the Class I differential if supply and demand warrants a change in order to increase or decrease milk production. The authority for the Secretary to provide for pricing zones (location adjustments) in an order is found in section 8c(5)(A) of

the Act. What this decision does is to reduce location adjustments at various locations inside the lower portion of Michigan, but outside the Detroit area.

Kraft, in support of its Motion to Reopen the Hearing, refers to three letters from the Administrator of the Agricultural Marketing Service to: (1) Kraft, dated June 7, 1988, (2) Friendship Dairies, Inc., dated June 7, 1988, and (3) Dean Foods, dated March 22, 1989. In Kraft's view, the denial of proposals by these three organizations (markets other than Southern Michigan) is inconsistent with our rationale in the Southern Michigan decision.

The letter to Kraft was a denial of their proposal to increase the Class I differential 15 cents in the New York-New Jersey market because of the supply-demand pricing standard contained in section 8c(18) of the Act.

The letter to Friendship Dairies, Inc. denied two proposals that would have increased the Class I differential in the New York-New Jersey market. Again this denial was based on the supply-demand pricing standards contained in section 8c(18) of the Act.

The letter to Dean denied proposals that would have decreased the Class I differential seven cents in the Rio Grande Valley order and would have changed the location adjustment applicable to plants located in southeastern New Mexico from a minus 15 cents to a plus 21 cents for a net increase of 29 cents at Clovis, New Mexico. This request was prompted by Dean and several other handlers to lessen perceived interhandler inequities in the costs of raw milk that resulted from a 96-cent increase in the Class I differential under the Texas order and no change in the Rio Grande Valley Class I differential as mandated by the Food Security Act of 1985.

The Dean proposals were denied because they were inconsistent with the purpose of location adjustments since the proposals would have increased the price of milk in an area of surplus production and decreased the price of milk in an area that is slightly deficit in terms of local supplies.

The factual situation in the southwestern United States in March 1989, in terms of supply-demand for milk, was entirely different than marketing conditions in the Southern Michigan market at the time of the hearing (May 1988). Therefore, there is no inconsistency on the part of the Department in denying the proposals to amend the Rio Grande Valley order and in adopting the proposed amendments to the Southern Michigan order. Kraft, it appears, is misinterpreting the two sections of the statute that have been

cited earlier and has taken a very narrow view of the purpose of location adjustments. The primary purpose of location adjustments continues to be to provide an incentive to move milk from the production area to the consumption center.

There is nothing improper about increasing or decreasing the location adjustment in a market to reflect changes in the relationship between production area and consumption areas. As clearly stated in the recommended decision, there have been significant changes in the Southern Michigan market since 1977 to justify the adoption of the proposed amendments.

Kraft, in its motion to reopen the hearing, states that it has closed its Clare, Michigan, plant since the hearing was held and that this has decreased the manufacturing capacity in the market. In Kraft's view, the closing of the Clare plant justifies reopening the hearing.

Kraft's request to reopen the hearing also relies on statements in briefs and exceptions filed by other producers and handlers to the effect that they would withdraw their milk from the Southern Michigan pool if certain proposed location adjustments were adopted at plants located outside the marketing area.

In response, we must conclude that Kraft's arguments are not persuasive as to any need to reopen the hearing. As to any loss of manufacturing capacity, we find no reason to believe that there will be any significant impact on the market due to such reduced capacity. Moreover, the record reveals that a new manufacturing plant is under construction, although it is at a different location. Since neither of the Kraft plants ship milk to distributing plants, we foresee no impact upon availability of milk for Class I use due to Kraft's closing its plant at Clare.

As to whether other parties shift milk to another order, such action, if it occurs, would not have a negative impact upon blend prices to producers in the lower portion of Michigan. If the result of such a shift would be higher blend prices to producers in lower Michigan, that would not compel a reopening of the hearing, even if the PEC did not intend that the effect of its proposals would be to increase returns to producers. It would not be surprising that adoption of a more realistic location adjustment applicable to distant milk supplies would cause handlers to evaluate whether those distant supplies should continue to be associated with the Southern Michigan order.

For the foregoing reason, the exceptions filed by Kraft and the Motion to Reopen the Hearing are denied.

Lansing Dairy also took exception to the recommended decision because its costs for bulk milk would be five cents higher since the plant would be in the base zone rather than in the minus five-cent zone. In its exceptions, Lansing states that over 30 percent of its finished products are marketed in the Detroit area and that therefore, its major competitors are not in the same area as its plant.

In Lansing's view, the Secretary should consider a handler's cost of hauling packaged milk to the major sales area where they compete in arriving at the appropriate location adjustment. However, it is not the purpose of location adjustments to reflect the costs of moving packaged milk from one location to another. There is nothing in the exception that persuades us to reconsider this issue. Therefore, the exceptions filed by Lansing are denied.

2. The location adjustment rates applicable to plants located outside location adjustment zones. The order should be amended to specify 2.25 cents per hundredweight per 10 miles as the rate to be used for computing Class I and uniform price differentials at plants located outside the defined location adjustment zones.

As indicated previously, the PEC proposed changing the location adjustment rate on Class I milk and the uniform price applicable to plants located outside the marketing area. The PEC proposed changing the present rate from 1 cent to 2.25 cents per ten miles of fraction thereof.

The PEC witness testified that the present one-cent rate does not result in very close alignment of either the Order 40 Class I price or the Order 40 uniform price as it relates to prices in other markets in the Upper Midwest.

Proponent's witness said that the Chicago order's Class I differential at Green Bay, Wisconsin, for example, is \$1.12; whereas, the Order 40 Class I differential at this location using the present one-cent rate would be \$1.40.

The spokesman for the PEC said that the difference in the blend price for a producer who is pooled at an Order 40 plant versus an Order 30 plant is even more dramatic. For example, he stated that for 1987, the Order 30 uniform price zoned out to Oconto, Wisconsin, averaged \$11.44. The 1987 uniform price for milk pooled by an Order 40 plant also located in Oconto County, he said, averaged \$11.71. The Frigo Cheese

Company plant at Lena, Wisconsin, is in Oconto County.

The proponent's witness said that other examples of blend price differences could be demonstrated and that this degree of price difference creates disorderly market conditions. He said that this much of a difference in price creates an incentive for distant milk supplies to attempt to become pooled in a market with a higher Class I utilization while the supplier has no desire to supply the fluid market that is generating the higher blend price. Such activities, he said, dilute the returns from the Class I market for other producers who are actively involved in supplying the Class I and Class II processors.

The PEC spokesman said that milk from producers located in 16 Wisconsin counties was pooled as producer receipts on Order 40 for one or more months during 1987. In December 1977, he said, 10.6 million pounds of Wisconsin milk was pooled on Order 40 and for December 1987, 16.4 million pounds of Wisconsin milk was pooled on this order. The witness said that the PEC is concerned that this trend will escalate.

Proponent's witness said that in 1987 the producer delivery provisions and the diversion limitation provisions were relaxed. These changes, he said, were necessary to avoid uneconomic movements of milk but they also made it easier for distant producers to pool milk on Order 40 and divert that milk to nonpool plants. The witness said that under the current provisions, during the months of September through February each Order 40 producer is required to deliver only one day's production to a pool plant and that for the months of March through August, 100 percent of a producer's milk may be diverted to a nonpool plant.

The PEC witness testified that increasing the mileage rate as proposed will minimize the economic advantage that may be realized by such activities and therefore prevent the dilution of the uniform price. The mileage computation, he said, would be determined by the market administrator using the shortest highway distance between such a plant and the nearest point in the Southern Michigan marketing area.

On cross-examination, the proponent's witness testified that the PEC, in arriving at their proposed rate of 2.25 cents, considered the fact that within the State of Michigan, MMPA can haul milk at less cost than outside the State. He said that the State permits hauling tandem units with a payload of 100,000 pounds in the Upper Peninsula. The proposed rate, he says, covers the

cost of transporting milk within the State of Michigan but not outside the State.

At the hearing a witness for Chicagoland Dairy Sales, Inc. (CDS), testified in support of the PEC proposal.

The CDS witness said that this organization is comprised of our cooperative associations, namely, Alto Cooperative Creamery, Lake-to-Lake Dairy Cooperative (division of Land O'Lakes, Inc.) Outagamie Producers Cooperative and Wisconsin Dairies Cooperative. This organization, he said, has 12 reserve supply plants pooled on Order 30.

The CDS spokesman said that their organization is experiencing problems meeting Order 40's producer pay prices in the common procurement areas of Michigan and Wisconsin. He said that the higher pay prices result from the higher Class I utilization in the Southern Michigan market relative to the Chicago Regional market.

The witness said that there is a common overlapping procurement area in the State of Wisconsin and in Menominee County in Michigan. He said that when comparing May 1977 with May 1987, the amount of Wisconsin milk procured by Order 40 plants increased by 44 percent and for December 1987 the increase was 54 percent.

The spokesman for CDS also testified that the Order 40 uniform price for January 1988 was \$11.98 at the zero zone and for Chicago the zero zone blend price was \$11.47, or 51 cents lower. He said that the adjusted uniform price at Wyocena, Wisconsin (where a Frigo plant is located), would be \$11.64 (\$11.98 minus a 34-cent location adjustment) for Order 40 and that under the Chicago order the uniform price at the same location (Zone 9) would be \$11.26, or 38 cents less. The witness said that this pricing advantage enjoyed by plants pooled in Order 40 is due to the low location adjustment rate contained in that order. He said that Order 30 uses a location adjustment rate of 1.6 cents per 10 miles.

The CDS witness said that for the years of 1985 through 1987, the Order 40 uniform price averaged 21, 17 and 25 cents higher, respectively, than the Order 30 price at Wyocena. For 1988, he said, the spread for the months of January through April was 38, 41, 36 and 30 cents, respectively.

At Lena, Wisconsin (where another Frigo plant is located), he said, for the years of 1985 through 1987, the Order 40 uniform price averaged 26, 22 and 30 cents higher, respectively, than the Order 40 price at that same location. For 1988, he said, the spread for the months

of January through April was 43, 46, 41 and 35 cents, respectively.

The CDS spokesman said that for the years of 1985 through 1987, the Order 40 uniform price averaged 35, 31 and 39 cents higher, respectively, than the Order 30 price at Carney, Michigan (the location of a third Frigo plant). For 1988, he said, the spread for the months of January through April was 52, 55, 50 and 44 cents, respectively.

The Frigo witness presented testimony to modify the PEC proposal. He said that the location adjustment rates for Order 33 (Ohio Valley) and Order 36 (Eastern Ohio-Western Pennsylvania) are 1.5 cents per 10 miles, for Order 30 it is 1.53 cents, and 2.0 cents for Order 49 (Indiana). The witness said that the location adjustment rate for Order 40 should be somewhere between 1.5 and 2.0 cents per ten miles. He said that Frigo preferred a 1.5-cent rate. Furthermore, he said, § 1040.52(a)(2) of the order should be changed by deleting the language that reads "the nearest point in such territory" to read "the state line."

The Frigo spokesman said that the milk supply in the Upper Peninsula is closely aligned with Order 40 either through the efforts of MMPA or Frigo. He said that the PEC proposals would lower returns to dairy farmers located in the Upper Peninsula and also limit the economic viability of their Carney plant. In his opinion, there are no realistic alternatives for the Carney plant should it become unprofitable under Order 40. He said that reserve plant status under Order 30 is not possible.

On cross-examination he said that using a 1.5-cent location adjustment rate, as Frigo proposed, would produce minus location adjustments of 40 cents at Carney, 49 cents at Lena and 39.5 cents at Wyocena. He said the current minus location adjustments at these same locations are 35, 41 and 34 cents, respectively. This would mean blend price decreases of 5, 8 and 5.5 cents, respectively.

On cross-examination, he said that about three percent of their total milk supply moves to an Order 40 distributing plant. He said that very little milk moves from their Lena plant to Liberty Dairy, a distributing plant located at Evart, Michigan (Osceola County) and owned by Dean. The witness said that the unit pooling provisions do not require Frigo to ship any milk from any particular plant. He said that milk from their Wyocena plant is moved the 320 miles around the south side of Lake Michigan to Liberty Dairy at a cost of \$1.60 per hundredweight. From the Carney plant, he said, the milk moves north around

Lake Michigan and that they pay various rates for hauling.

The Frigo modification was supported at the hearing by Dean. A witness for Dean testified that their distributing plant at Evart acquires, each month, up to 10 percent of their milk supply from Frigo. He said that the majority of their milk supply comes from the Upper Peninsula. The Dean witness testified that if the location adjustment for the MMPA supply plant at Sault Ste. Marie is 22 cents then the Frigo plant at Carney should have a 27-cent location adjustment.

The Dean spokesman expressed the view that after MMPA and Leprino build their new cheese plant at Allendale that he would have some reservation about milk supplies being made available for distributing plants. He said that if you look at Frigo from the standpoint of being a cheese operation and compare it to other cheese operations in the state, then you would have to conclude that Frigo is supplying more of their milk to the fluid market than any other other cheese operations.

Farmers Union Milk Marketing Cooperative (FUMMC) also presented testimony to modify the PEC proposal. Their witness said that the FUMMC represents approximately 238 producers shipping to three supply plants pooled on Order 40 (Frigo plants). He said that the PEC proposal would adversely affect a group of Wisconsin and Michigan Upper Peninsula producers who have been associated with Order 40 for 20 years. The proposal, he said, would result in the shifting of about 30 million pounds of milk from the Order 40 pool to the Order 30 pool, thereby reducing the Order 30 blend price which is already lower than the Order 40 blend price.

The FUMMC witness said that they want the PEC proposal to coincide with neighboring markets and that they prefer the Order 30 location adjustment rate of 1.53 cents. He said that the location adjustment rate should be calculated from the Michigan State line and that the present rate of one cent represents the cost of moving milk.

Manitowoc Milk Producers Cooperative (Manitowoc) also supported a modification of the PEC proposal. Their witness said that their organization represents approximately 2,500 members shipping milk to Orders 30, 40, 68 (Upper Midwest) and Order 79 (Iowa). He said that about 130 of their members are shipping milk to the Frigo plants located at Carney and Lena. The Manitowoc witness suggested a location adjustment rate of 1.5 cents per 10 miles. This rate, he said, would provide uniformity and equity among producers as Order 40 relates to other orders.

The proposal to change the rate for computing location adjustments to Class I and uniform prices at locations outside the territory specified in the location adjustment zones should be adopted. The current location adjustment rate of 1 cent per hundredweight per 10 miles seriously overstates the value of milk to the Southern Michigan pool at locations considerably distant from the central market.

Location adjustments to Class I and uniform prices at plants located outside the zones specified for lower Michigan, which includes the marketing area and other territory, are based on distance from the plant to the nearest point in such zoned territory. The location adjustment is computed by adding to the price differential applicable at such nearest point an amount computed by multiplying the number of 10-mile increments by one cent.

There are four supply plants pooled under the order at which such location adjustments are applicable. They are located at Sault Ste. Marie and Carney, both in the Upper Peninsula of Michigan, and at Lena and Wyocena, Wisconsin. The current location adjustments at those plants are: Sault Ste. Marie, —23 cents; Carney, —35 cents; Lena, —41 cents; and Wyocena, —34 cents.

The nearest point in the zoned territory for the plants in the Michigan Upper Peninsula and at Lena, Wisconsin, is Mackinaw City. For the Wyocena, Wisconsin, location, the mileage is computed from Grand Beach (Berrien County), Michigan. From the point of measurement, the mileages to the plants are as follows: Sault Ste. Marie, 51–60 miles; Carney, 171–180 miles; Lena, 231–240 miles; and Wyocena, 221–230 miles.

The current location adjustment rate is outdated. Its use results in Class I and uniform prices at the various locations that are too high relative to the prices of milk in the marketing area because the rate does not reflect the cost of hauling milk. The record indicates that it costs about 2.25 cents per hundredweight per 10 miles to move milk within Michigan, and 3.6 cents or more to move milk into Michigan from plants outside Michigan. These numbers are based on the testimony of the PEC witness, who stated that the proposed 2.25-cent rate "—fairly well reflects the cost of transporting milk within Michigan." The witnesses for Frigo Cheese and Farmers Union Co-op indicated rates of \$1.60 per hundredweight for a 320-mile haul, and \$1.60 to \$1.80 per loaded mile, respectively. These rates vary from about 3.4 cents to 5 cents per ten miles per hundredweight, assuming a 47,000-

pound load of milk for the per loaded mile figure. Thus, it is clear that a transportation rate of 1.0 cents per 10 miles per hundredweight is seriously inadequate to reflect hauling costs incurred under current conditions.

In exceptions to the recommended decision, Frigo maintained that the distance from Wyocena, Wisconsin, to Evart, Michigan, is 443 miles, not 320. The 443-mile number is accepted as a more accurate number. Frigo's exception, however, argues that based on the entire haul, the rate charged is only 1.8 cents per hundredweight per 10 miles, and thus concludes that the location adjustment rate should be 1.75 cents per 10 miles per hundredweight.

Location adjustments are based on the distance between plants. Likewise, the cost of hauling milk is for moving the milk from one location to another. The costs per hundredweight per 10 miles as indicated in the recommended decision stand as valid to reflect the hauling costs indicated by the representative for Frigo and by the representative for FUMMC.

Various proposed modifications of the PEC proposal should not be adopted. After a thorough analysis of the issue, it is concluded that the best fit of location adjustments outside the zoned area results from the PEC proposal.

The proposal by Frigo to extend the zoning concept to include two additional zones for the Michigan Upper Peninsula was not supported by testimony or other evidence other than an expression of concern for the well-being of producers in that area. In that regard, such a modification would provide a lesser location adjustment to producer blend prices at the Frigo supply plants than would the proposals of the PEC. Along with this modification Frigo proposed that location adjustments at plants outside Michigan be based on the distance from the plant to the State line as determined by the Market Administrator, and that the rate per hundredweight per 10 miles should be somewhere between 1.5 and 2.0 cents. Under this proposed modification, the location adjustment at Carney would be —40 cents, with adjustments at Lena and Wyocena of —52 cents and —51 cents, respectively.

The modifications suggested by FUMMC and Manitowoc would use 1.50–1.53 cents as the location adjustment rate. Additionally, FUMMC would prefer measuring distances to plants from the Michigan State line. The basis for these modifications was to improve uniformity of location adjustment rates among orders. It is noted that these modifications also would result in

smaller negative location adjustments and, therefore, higher blend prices to producers at the Frigo plants.

The proposal by the PEC would produce location adjustments of -20.5 cents at Sault Ste. Marie and -47.5 cents, -61 cents, and -57 cents at the Carney, Lena, and Wyocena plants, respectively.

The record in this proceeding, as previously indicated, does not contain detailed hauling cost information. But there is a basis for concluding that it costs more than 2.25 cents per hundredweight per 10 miles to move milk outside the State of Michigan. Therefore, there is no sound basis to consider further the alternative rates of 1.5 to 2.0 cents as suggested by several parties.

The value of milk at locations considerably distant from the central market must be related to the transportation costs that would be incurred in moving that milk to market. All the distributing plants that are fully regulated under the Southern Michigan order are located in the lower part of the State, mostly in the southern half of the State. Moreover, there is plenty of milk produced in this portion of the State to meet the market's needs. Since location adjustments at distant supply plants outside this area currently do not realistically reflect transportation costs, the blend prices applicable under order at such locations overstate the value of the milk to the Class I market. Thus, the producers in the southern part of the State are subsidizing producer incomes in the Upper Peninsula and Wisconsin areas that supply milk to those supply plants. This situation would continue under the PEC proposals, but not to as great a degree as it now does.

The two supply plants in Michigan's Upper Peninsula are located in the marketing area defined under the Michigan Upper Peninsula order and the two Wisconsin supply plants are located in the Chicago Regional order marketing area. Ideally, location adjustment rates under the Southern Michigan order would provide Class I prices at the plant locations equal to the applicable Class I price at such locations for the order marketing area in which the plants are located. The plant at Wyocena, Wisconsin, has a Class I differential of \$1.188 under the Chicago Regional order. The PEC rate of 2.25 cents yields a Southern Michigan Class I differential at Wyocena of \$1.75 minus 57 cents, or \$1.18. Similarly, although not quite as close, the Chicago order Class I differential at Lena, Wisconsin is \$1.073, whereas the 2.25 cents rate proposed under the Southern Michigan order

would result in a Class I differential of \$1.14.

Under the Michigan Upper Peninsula order, the Class I differential at Carney is \$1.15, compared to the proposed \$1.275 under the Southern Michigan order. At Sault Ste. Marie, the Class I differentials would not match up closely. The difference would be 19.5 cents. However, even with these differences Class I price alignment under the orders would be more nearly achieved using the 2.25-cent rate than with any of the proposed modifications. Thus, the best fit is provided using this rate.

There was some testimony on this issue concerning misalignment of blend prices at the Carney, Michigan, and Wisconsin supply plants. The location adjustment rate change will result in lower blend prices under the Southern Michigan order at these locations and thus in a closer alignment with blend prices under the Chicago order for the Wisconsin locations. However, it must be noted that the desire to achieve blend price alignment is not a sufficient basis for revising the location adjustment rate. Instead, the location adjustment rate should more nearly reflect the cost of transporting milk. Even if Class I prices are perfectly aligned, blend price differences may continue due to different levels of Class I use between two orders.

In addition to the exceptions filed by Frigo, exceptions also were filed by FUMMC and Dean. CDS indicated by letter that they support the proposed amendments.

The Frigo exceptions, for the most part, are a reiteration of the testimony presented at the hearing and the arguments contained in a post-hearing brief. Their views regarding the appropriate location adjustment for their plant at Carney, Michigan were fully considered in the issuance of the recommended decision.

However, Frigo's exception suggests that the location adjustment rate is being changed for the purpose of improving blend price alignment between the Southern Michigan and Chicago orders. This is not the case. The only purpose for adopting the 2.25 cents per hundredweight per 10 miles rate is so that the value of milk at these distant locations will more nearly reflect the cost of moving milk to the market. For this reason, and other reasons stated earlier in this decision, the Frigo exceptions are denied.

The exceptions filed by FUMMC also constitute a reiteration of their testimony at the hearing and the arguments contained in their post-hearing brief. Their views regarding the

appropriate location adjustments for plants located beyond the proposed pricing zones were fully considered in the issuance of the recommended decision, therefore, their exceptions are denied.

Dean, in its exceptions, indicates the volume of milk received by its Liberty Dairy plant for the month of January 1989 and the distance this milk moved from the farms to the plant. This information cannot be considered by the Secretary because it was not part of the record.

Dean's representative in his exceptions and in his testimony presented at the hearing expressed a concern about the price that Dean will have to pay for milk to supply the Liberty Dairy plant as a result of the agreement between Leprino Cheese and MPPA. Dean has also expressed the view that this decision will exacerbate their ability to acquire a supply of milk because Frigo may be forced to ship a substantial quantity of milk to the Chicago Regional order rather than deliver milk to Liberty Dairy. Dean has asked that the Secretary continue to have a minus 11-cent location adjustment at Liberty Dairy or to decrease the location adjustments by four cents that would not be applicable to Frigo at their three plant locations.

In essence, Dean is asking that order provisions ensure the ability to not have to rely too heavily on cooperatives in acquiring a supply of milk for the Evart plant. However, it is not the function of the order to assure any handler of a supply of milk from any particular source or exclusive of any source. Dean's arguments are not persuasive and the exceptions, therefore, are denied. The views expressed by Dean as to the appropriate location adjustments for plants located outside of the proposed zones were fully considered in the issuance of a recommended decision, and, therefore, their exceptions are denied.

The proposed changes in the location pricing provisions (both the zoning and rate issues) will change the total value of pooled milk by a small amount. An exhibit introduced by the market administrator shows recomputed uniform prices for the zero adjustment zone for May 1987 through April 1988 as being only one cent per hundredweight lower for eight months and no change for the other four months. For example, had the proposed changes been in place in December 1987, the value of Class I milk in the pool would have been, at most, about \$40,000 higher. However, in a 379 million pound market, the impact of the \$40,000 on the uniform price for

the zero zone would have been about one cent per hundredweight.

There would be changes in the distribution of the location adjustment money among the market's producers. In general, producers in the western and northern part of the state will receive higher returns for their milk, while producers delivering their milk to plants located outside the marketing area will receive less for their milk. Not enough detailed information is available to be able to determine how much more or less will be paid to producers for delivering milk to plants in the specific zones. The amounts with which prices would change at the various locations have already been described.

3. *Changing the factor used in the computation of the butterfat differential.* The order should be amended to provide for the use of a factor of 0.115, rather than 0.113, times the butter price specified in the order in the computation of the butterfat differential.

The order presently provides that for milk containing 3.5 percent butterfat, the uniform price shall be increased or decreased for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential and rounded to the nearest one-tenth cent. The butterfat differential is determined by multiplying 0.113 times the simple average of the wholesale selling prices (using the midpoint of any grade range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

The PEC witness proposed that in the computation of the butterfat differential, a factor of 0.115 be used. He said that in 39 of 42 marketing orders, a factor of 0.115 is used in the computation of the butterfat differential.

Butterfat produced in the State of Michigan, he said, is marketed throughout most of the eastern half of the United States either as part of a fresh liquid product or as a component of a manufactured dairy product. The witness said that at different times of the year, butter produced in the Far West is shipped into Midwest markets. He testified that the cost of butterfat to all processors of dairy products should be similar, particularly since the market for butterfat is national.

A witness for Lansing Dairy testified that they were opposed to this proposal. The witness, however, never indicated why.

In its brief, Frigo stated that their organization supported the PEC proposal.

This proposal should be adopted. Marketing orders adjacent to the Southern Michigan market are using the factor of 0.115 in the computation of the

butterfat differential. The adoption of this factor will promote orderly marketing of butterfat in the Southern Michigan market and in adjacent markets.

No exceptions to the recommended decision were filed on this issue.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the

exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Southern Michigan marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

January 1989 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the southern Michigan marketing area is approved or favored by producers, as defined under the terms of the order (as amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on June 20, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Southern Michigan Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed.

except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held pursuant to the provision of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Southern Michigan marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator on February 21, 1989, and published in the Federal Register on February 24, 1989 (54 FR 7938), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1040.52 [Amended]

2. In § 1040.52, revise paragraph (a)(1) to read as follows:

(a) * * *

(1) *Zone rates.* For a plant located within the following described territory, including the cities located therein, the applicable zone rates shall be as follows:

Michigan Counties

Zone I—No Adjustments

Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw and Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser Townships).

Zone II—5 cents

Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph and Van Buren.

Zone III—7 cents

Bay (all townships excluded from Zone I), Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newago, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

* * * * *

3. Amend § 1049.52(a)(2) by changing "one cent" to "2.25 cents."

§ 1040.74 [Amended]

4. Amend § 1040.74 by changing "0.113" to "0.115".

§ 1040.75 [Amended]

5. Amend § 1040.75 by removing and reserving paragraph (a)(2) and revising paragraph (a)(3) to read as follows:

(a) * * *

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within the Michigan counties of Macomb, Oakland, and Wayne.

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Southern Michigan Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1040.1 to 1040.86, all inclusive, of the order regulating the handling of milk in the Southern Michigan marketing area (7 CFR PART 1040) which is annexed hereto; and

II. The following provisions:

§ 1040.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of January 1989, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1040.88 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)

Attest _____
Date _____

(Signature)
By _____
(Name) (Title)

(Address)

[FR Doc. 89-15024 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1126

[DA-89-025]

Milk in the Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would continue for the month of August 1989 through July 1990 a suspension of portions of the pool plant and producer milk definitions of the Texas order. The continuation of the suspension was requested by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market. The cooperatives contend that continuation of the suspension is

necessary because the marketing conditions that resulted in the granting of the current suspension continue due to production increases in Texas.

DATE: Comments are due on or before July 11, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of August 1989 through July 1990:

1. In § 1126.7(d) (introductory text,) the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) (introductory text,) the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13, paragraph (e)(1).

4. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

5. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator."

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 15th day after publication of this notice in the Federal Register. The comment period is limited to 15 days to enable completion of the required rulemaking procedure in time to include August 1989 in the suspension period should it be found necessary.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would continue, for the months of August 1989 through July 1990, the suspension of portions of the pool plant and producer milk definitions of the Texas order. Specifically, the proposed action would continue the suspension of the 60-percent delivery standard for pool plants operated by cooperatives; the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants, and the limits on the amount of milk that a pool plant operator may divert to nonpool plants. In addition, the action would, for the same time period, continue to suspend the shipping standards that must be met by supply plants to be pooled under the order and the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order provides for pooling a cooperative association plant located in the marketing area if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. Also, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received at pool distributing and supply plants during the month. In addition, the order provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received

during the month at the handler's pool plant. The proposed action would continue to inactivate the 60-percent delivery standard for plants operated by a cooperative association; allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would continue the current suspension of these performance standards for an additional 12 months for August 1989 through July 1990 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The proposed action would continue to have these requirements suspended.

The continuation of the current suspension was requested by two cooperative associations (Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.) that represent a substantial proportion of the dairy farmers who supply the Texas market. Associated Milk Producers operates two supply-balancing plants that are pooled under the Texas order and a new supply-balancing plant will begin operation in June 1989, but will not reach its capacity until late in 1989. Mid-America Dairymen operates a supply plant in southwestern Missouri that has historically been pooled under the Texas order and a designated supply plant in Texas used strictly to assemble milk for shipment to nonpool plants for use in manufactured dairy products.

The cooperatives contend that this additional 12-month continuation of the current suspension is necessary because

the marketing conditions that resulted in the granting of the current suspension continue due to production increases in Texas. The cooperatives state that continued substantial production increases have not made it possible to project production levels in 1990 and beyond with any degree of certainty, thereby making any amendatory action at this time impractical. The cooperatives also contend that the suspension continuation is necessary to give handlers the flexibility to dispose of excess milk in the most efficient manner. In addition, they believe that the suspension would eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the Texas market.

In view of the foregoing, it may be appropriate to continue the current suspension of the aforementioned provisions of the Texas order.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: June 20, 1989.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 89-15027 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25943; Notice No. 89-17]

RIN 2120-AD15

Navigational Equipment Requirement in a Terminal Control Area (TCA), Visual Flight Rules (VFR) Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove the navigational equipment requirement for operations conducted under VFR in a TCA and recognizes the usefulness of other types of navigation equipment for VFR operations. Effectively, this proposal would codify existing practices into the regulation.

DATE: Comments on this proposal must be received on or before July 26, 1989.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25943, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Laser, Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in these proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Any materials submitted should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25943." The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed as a result of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

On October 6, 1988, the Federal Aviation Administration (FAA) issued Amendment Nos. 61-80, 71-11, and 91-205, Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements (53 FR 40318). Those amendments require, among other things, all aircraft operating in a TCA to be equipped with VOR or TACAN navigational equipment thereby eliminating, effective July 1, 1989, the previous navigational equipment requirement exclusion for helicopters. By separate action, the FAA amended the effective date pertaining to helicopter equipment in consonance with this proposal. That delay is necessary to allow interested parties to comment on this proposal and to delay purchase of equipment should the proposal be adopted.

The FAA has received numerous requests for exemption from the helicopter equipment requirement, and petitions to allow the use of certain area navigational equipment for operations in a TCA. Specifically, the National Association of State Aviation Officials, in its letter of January 14, 1989, stated that many new generation helicopters are operating with LORAN-C as a primary navigation system, and that LORAN-C equipment provides better position information than VOR equipment. The Experimental Aircraft Association (EAA), in its letter of January 5, 1989, advised the FAA that it had conducted an investigation concerning the TCA navigation equipment requirement. It was EAA's conclusion that LORAN-C produces more satisfactory results for many users and is much more useful for helicopter operations than VOR equipment. The Helicopter Association International (HAI) petitioned the FAA for a similar change to the equipment requirement—an exception for VFR and special VFR helicopter operations. The FAA believes the VFR provisions proposed in this notice are consistent with HAI's proposal. Several other organizations that use helicopters extensively have petitioned the FAA for exemption from the VOR/TACAN navigation equipment requirement citing that their aircraft are already equipped with LORAN-C.

Discussion

Section 91.33(d)(2) of the Federal Aviation Regulations (FAR) (14 CFR Part 91) specifies that all *civil* aircraft used to conduct instrument flight rules (IFR) operations must have " * * * navigational equipment appropriate to the ground facilities to be used." This

provision is intentionally broad to allow the use of a variety of ground-based navigational facilities when conducting flight under IFR. However, the requirement is not applicable to public aircraft, i.e., aircraft used only in the service of a government, or a political subdivision, and foreign aircraft. Section 91.90 of the FAR, Terminal Control Areas, provides a more specific navigational equipment requirement for both civil and public aircraft conducting IFR operations in a highly regulated air traffic control (ATC) environment. To illustrate, in the past, most departure and arrival procedures at TCA primary airports involved navigation via specific VOR radials to a given point along an airway, route, or precision instrument approach procedure. In the current radar environment the use of VOR radials in conjunction with departure and approach procedures is often replaced with radar vectoring procedures. However, the ATC system must be prepared to revert to a non-radar environment should the need arise, in which case the VOR or TACAN requirement would be critical to the continued ATC separation of aircraft.

The need for specific navigational equipment for aircraft conducting operations in a TCA under VFR is a different issue. In a radar environment departure and arrival operations conducted by aircraft under IFR or VFR are handled by ATC in very much the same manner. Traffic operating under VFR is generally provided with radar vectors to points beyond which navigation within the TCA can be accomplished using pilotage or dead reckoning procedures. Should the radar become inoperative, ATC would simply allow VFR aircraft to navigate via visual reference to known checkpoints and landmarks where such routes can be procedurally separated from those used by IFR aircraft.

The Proposal

Therefore, based on the foregoing, the FAA believes there is reason to propose amending the regulations to require VOR or TACAN navigational equipment only for those operations conducted under IFR. Effectively, operations under VFR may be conducted using other types of navigational equipment such as LORAN-C, Omega, etc., or, may be conducted without any navigational equipment.

The FAA has established a working group with the goal of promulgating a regulation to establish the minimum standards under which a radio navigation system may be certified as the sole radio navigation system required in an aircraft for operation in

the United States airspace. This proposal, which applies to VFR operations in a TCA, does not establish LORAN-C or any other area navigation system as the sole radio navigation system required in aircraft for operations in the National Airspace System.

Conclusion

For the above reasons the FAA has determined that this action is not a "major rule" under Executive Order 12291; and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A full regulatory evaluation was prepared for the final rule in Docket 25304 and placed in the regulatory docket. Because VOR or TACAN equipment remains a requirement for IFR operations in the TCA, this notice does not have any significant effect on the information and conclusions of that evaluation. Accordingly, the existing regulatory evaluation remains valid and no further evaluation is required. For the reasons contained in the regulatory evaluation in the docket, I certify that this action will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The requirements proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, and airports.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 91 of the Federal Aviation Regulations (14 CFR Part 91) as follows:

1. The Authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.

E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 91.90(c) is revised to read as follows:

§ 91.90 Terminal Control Areas.

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person may operate an aircraft within a terminal control area unless that aircraft is equipped with—

(1) *For IFR operations:* An operable VOR or TACAN receiver; and

(2) *For all operations:* An operable two-way radio capable of communications with ATC on appropriate frequencies for the terminal control area.

Issued in Washington, DC on June 20, 1989

John R. Ryan,

Director, Air Traffic Operations Service.

[FR Doc. 89-14995 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89-02; Notice 1]

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) implements a new program enacted by the Anti-Drug Abuse Act of 1988, which authorizes two new categories of federal incentive grants to States that adopt and implement comprehensive drunk driving prevention programs which provide for certain specified elements. This rulemaking action proposes the manner in which States would certify that they are eligible for these incentive grants, and the procedure by which NHTSA would award such grants. The agency requests comments on the proposed regulation discussed in this notice.

DATES: Comments must be received by July 26, 1989.

ADDRESS: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street, SW.,

Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis Buchanan, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2753; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone (202) 366-1834.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, was signed into law by the President. Section 9001 of the Act, et seq., entitled the Drunk Driving Prevention Act of 1988, amends the Highway Safety Act of 1966, 23 U.S.C. 401, et seq., by adding section 410, which authorizes a new incentive grant program. This program establishes a two-tiered incentive grant program, under which States may qualify for basic and supplemental incentive grants for adopting and implementing comprehensive drunk driving prevention programs which are self-sustaining and provide for certain specified elements that will improve the effectiveness of the State's enforcement of drunk driving laws. States may qualify for these grants in up to three fiscal years.

The section 410 program is similar to the "section 408" alcohol incentive grant program administered by NHTSA (23 U.S.C. 408), under which States may qualify for grants by adopting and implementing effective programs to reduce drunk driving. The section 408 program was first enacted in 1982, under Pub. L. 97-364, as a two-tiered (basic and supplemental) grant program. In 1984, section 408 was amended, Pub. L. 98-363, to expand the scope of the 408 program to include programs to combat drugged driving as well as drunk driving and to establish a third grant for which States may qualify (special grants) to encourage the States to enact tough minimum sentencing standards. Section 203 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, amended section 408 again by extending from three to five, the number of fiscal years in which a State may receive section 408 incentive grants.

This notice implements the 1988 statute which creates the new section 410 incentive grant program. It also proposes the manner in which States would certify that they are eligible for the grants, and the procedure by which NHTSA would award such grants. Since the States and members of the highway safety community concerned with drunk driving issues are already familiar with

the agency's section 408 program, we will point out, in this notice, many of the similarities and differences between the two programs. It is our hope that this will help to clarify the issues at hand.

Limitations on Grant Amounts

Section 410 provides, in subsection (d) that an eligible State may receive as a basic grant an amount that shall not exceed 30 percent of its FY 1989 highway safety grant (section 402) apportionment. This is similar to the "basic" grant for an eligible State under the section 408 program, which is 30 percent of the State's FY 1983 section 402 apportionment. Section 402 apportionments are made to the States as formula grants under the Highway Safety Act of 1966, 23 U.S.C. 402, to aid the States in conducting highway safety programs. To qualify for a section 410 basic grant, a State must provide for both an expedited driver's license suspension or revocation system and a self-sustaining drunk driving prevention program. These criteria will be explained in further detail below, under the heading, "Basic Grant Criteria."

As under the section 408 program, under section 410 a State may be eligible for supplemental grants only if it meets the basic grant requirements, and also meets the requirements for the supplemental grant. However, unlike section 408, which provides for a single supplemental grant (of up to 20 percent of a State's FY 1983 section 402 apportionment) for meeting a number of supplemental criteria, section 410 establishes four separate supplemental grants. A State may become eligible for one or more of these supplemental grants, once it meets the basic criteria and the requirements of the particular supplemental grant program, subject only to the matching requirements, which will be explained further below.

An eligible State may receive as a supplemental grant an amount that shall not exceed 10 percent of its FY 1989 section 402 apportionment for each of three programs: mandatory blood alcohol concentration testing programs for drivers involved in fatal and serious crashes who are believed to have committed an alcohol-related traffic offense; an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages; and a suspension of registration and return of license plate program for repeat offenders and individuals convicted of driving while their driver's license is under suspension or revocation for an alcohol-related offense. In addition, an eligible State may receive as a supplemental grant an amount that shall not exceed 25 percent

of its FY 1989 section 402 apportionment for a program which makes it unlawful to possess an open container or to consume an alcohol beverage in a motor vehicle. A State that meets the criteria for a basic grant and all four supplemental grants could receive grant funds in an amount of up to 85 percent of its FY 1989 section 402 apportionment. The criteria for qualifying for these supplemental grants will be explained in further detail below, under the heading "Supplemental Grant Criteria."

Since the statute provides that these grant amounts "shall not exceed" the percentages identified above, the agency has the discretion to award grants of amounts which are less than those specified in the Act. As will be explained in further detail in the "Basic Grant Criteria" portion of this notice, the agency has proposed to award a 20 percent basic grant under certain circumstances, rather than the full 30 percent. States would be able to qualify for the full 30 percent basic grant under the proposal by meeting additional requirements that need not be met to qualify for the 20 percent grant. Similarly, as will be explained in further detail in the "Supplemental Grant Criteria" portion of this notice, the agency has proposed to award a 10 percent grant to States for a program which makes it unlawful to possess an open container or to consume an alcoholic beverage in a motor vehicle under certain circumstances, rather than the full 25 percent. States would be able to qualify for the full 25 percent under the proposal by submitting additional information not required to qualify for the 10 percent grant.

The agency has otherwise proposed to award the full amount of each grant to States that meet the statutory criteria and demonstrate compliance in accordance with the regulation. We would be interested in receiving comments on the agency's proposed approach to the basic and open container and consumption grants, and whether it is believed that this approach should be considered for the other supplemental grants under section 410.

The statute provides, in section 410(c), that States, which may receive grants for up to three fiscal years, must match the section 410 grant funds they receive. The Act requires that the Federal share shall not exceed 75 percent of the cost of implementing and enforcing the drunk driving prevention program adopted to qualify for these funds in the first fiscal year the State receives funds, 50 percent in the second fiscal year and 25 percent in the third. These percentages are

identical to those which apply to the first three fiscal years of section 408 incentive grant funds.

The limitations on grant amounts described above are included in § 1313.4(b) of the proposed regulation. In addition, the amount that would be awarded under each grant is identified in the portion of the proposed regulation that describes the criteria for receiving that grant. See paragraphs (a) and (b) of § 1313.5 and paragraphs (a), (b), (c)(1), (c)(2)(i) and (d) of § 1313.6.

The agency proposes to accept, as we do for both the section 402 and section 408 programs, a "soft" match in section 410's administration. By this, we mean that the State's share may be satisfied by the use of either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies. A State could not, however, use any Federal funds, such as its section 402 or 408 funds, to satisfy the matching requirements. In addition, a State could use each non-Federal expenditure only once for matching purposes. In other words, State funds expended to support drunk driving enforcement activities, if used to match section 402 Federal funds, could not be used also to match section 408 or 410 grant money.

Certification and Award Procedures

In an effort to simplify the administration of this program, the agency proposes certification and award procedures for section 410 incentive grants that are essentially the same as those for section 408 incentive grants. These procedures have been used successfully by the States and the agency's headquarters and regional staff with only minor modifications since they were first established by regulation in 1983.

If adopted, the proposed regulation would require that the State submit an application to NHTSA, which demonstrates that it meets the requirements of the grants being requested. The particular requirements of these grants are defined in detail in §§ 1313.5 and 1313.6 of the proposed regulation. The State would also be required to submit a certification that: (1) It has a drunk driving prevention program that meets the grant requirements; (2) It will use the funds awarded only for the implementation and enforcement of drunk driving prevention programs; and (3) It will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1987 and 1988. These

conditions are established in section 410 (a) and (b) of the statute. In determining their prior levels of funding for the purpose of calculating aggregate expenditures in fiscal years 1987 and 1988, States must include any non-section 410 money expended for drunk driving prevention purposes, regardless of source. It must include, for example, both Federal and matching funds expended under sections 402 and 408 for drunk driving prevention purposes. This statutory requirement, which is included in both the section 408 and 410 incentive grant programs, reflects Congress' interest in having States expand their drunk driving activities without their becoming dependent on Federal funds to conduct these activities.

The agency would then notify the State as to whether or not it qualifies for section 410 grant funds. If the State is informed by NHTSA that it is eligible for a grant, the State would be required to submit, within 120 days, a drunk driving prevention plan, similar in form to its section 408 alcohol safety plan. The plan would have to describe the programs the State is and will be implementing in order to be eligible for the grant and provide the necessary information, identified in § 1313.5 and § 1313.6 of the regulation, to demonstrate that the programs comply with the applicable criteria. The plan would also describe how the specific supplemental criteria adopted by a State are related to the State's overall drunk driving prevention program.

The agency proposes to permit each State to submit its plan as a portion of the State's section 402 Highway Safety Plan, an option which is available to the States for their section 408 Alcohol Safety Plans. In addition, under the proposed regulation, a State could choose to submit a Drunk Driving Prevention Plan that covers the period of one, two or three years in which it is potentially eligible for section 410 grants. In subsequent years, States would update the plan to demonstrate that they meet subsequent year requirements.

Upon receipt and subsequent approval of the plan, the agency would award the grant to the State, and would authorize the State to incur costs subject to available funds. Vouchers would be submitted directly to the appropriate NHTSA Regional Administrator and reimbursement would be made to States for authorized expenditures. The funding guidelines applicable to the section 402 Highway Safety Program and the section 408 Alcohol Incentive Grant Program (NHTSA Order 462-13A) would also be used to determine reimbursable expenditures under the section 410

program. As with requests for reimbursement under the section 402 and 408 programs, States should indicate on the vouchers what percentage of the funds expended are eligible for reimbursement under section 410.

NHTSA is proposing to make awards in the order in which complete, qualifying applications are submitted. If the balance of available funds in any given fiscal year is insufficient to make a complete award to a State, NHTSA proposes that the entire balance of remaining funds may be awarded. (The agency notes that funding for the section 410 program is dependent upon annual appropriations, unlike the section 408 program which has "contract authority" under the Highway Trust Fund.) He would permit the State which would receive an incomplete award to choose to wait until the next fiscal year to receive its funds. States may select this option to avoid potential penalties that may result by receiving a partial grant since States may receive a grant in only three fiscal years. Time of submission would be determined by postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

Basic Grant Criteria

To be eligible for a basic grant, the Act specifies, in section 410(e) that a State must provide for an expedited driver's license suspension or revocation system and a self-sustaining drunk driving prevention program. These are statutory requirements which the agency has no discretion to change. As stated above, an eligible State may receive, under the statute, up to 30 percent of its fiscal year 1989 section 402 apportionment. The agency proposes that States which qualify for a basic grant and provide for an administrative review and suspend the driver's license of offenders within 15 days of their receiving notice, under § 410(e)(1) (C) and (F)(i) of the statute, would be awarded the full 30 percent. States that qualify for a basic grant and provide for an administrative review and suspend the driver's license of offenders within 30, but not 15, days of their receiving notice, under section 410(e)(1) (C) and (F)(ii) of the statute, would be awarded 20 percent. These States must also show that meeting the 15-day requirement would impose a hardship upon the State.

The elements of these two basic grant criteria and the manner in which States must demonstrate compliance are explained fully below:

1. Expedited Driver's License Suspension or Revocation System.

Section 410(e) specifies that eligible States must provide:

(1) for an expedited driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol which requires that—

(A) when a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol related traffic offense and such individual is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer serve such individual with a written notice of suspension or revocation of the driver's license of such individual and take possession of such driver's license;

(B) the notice of suspension or revocation referred to in subparagraph (A) provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of an individual for operating a motor vehicle while under the influence of alcohol and specify any rights of the operator under such procedures;

(C) the State provide, in the administrative procedures referred to in subparagraph (B), for due process of law, including the right to an administrative review of a driver's license suspension or revocation within the time period specified in subparagraph (F);

(D) after serving notice and taking possession of a driver's license in accordance with subparagraph (A), the law enforcement officer immediately report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this paragraph;

(E) in the case of an individual who, in any 5-year period beginning after the date of the enactment of this section, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer—

(i) suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; and

(ii) suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; and

(F) the suspension and revocation referred to under subparagraph (D) take effect not later than—

(i) 15 days after the day on which the individual first received notice of the suspension or revocation in accordance with subparagraph (B); or

(ii) 30 days after the day on which the individual first received notice of the suspension or revocation in accordance with subparagraph (B) if the Secretary determines that the requirements of clause (i) would impose a hardship upon the State.

In summary, the statute requires, under this criterion, that eligible states

provide for an administrative driver's license suspension or revocation system that contains the following elements: (1) law enforcement officers take possession of an individual's driver's license on the spot if the driver fails a chemical test or refuses to take one; (2) officers serve offenders with notice of the suspension or revocation and of their rights, including the right to an administrative review; (3) the officers immediately forward a report to the appropriate licensing agency within the State; (4) due process is ensured by providing offenders with the right to an administrative review; (5) the period of suspension or revocation is not less than 90 days for first offenders and not less than 1 year for repeat offenders; and (6) the administrative review takes place and the suspension or revocation, if any, takes effect not later than 15 days after the individual receives notice (30 days if the State can show that meeting the 15-day requirement would impose a hardship on the State).

Some of Congress' reasons for passing this provision of the Act are explained in the Act's legislative history. Senator Lautenberg, sponsor of S. 2367, the original Senate version of Section 410, which was referred to the Committee on Environment and Public Works, stated that an administrative suspension or revocation procedure, "under which a drunk driver's license is taken away, and taken quickly * * * is a proven means of reducing drunk driving. * * * Administrative revocation gets the drunk driver off the road. The punishment is both sure and swift. That certainty of punishment is essential in combatting drunk driving." Cong. Rec. Daily Ed., S. 16012, October 4, 1988.

In addition, Senate Report 100-594, which was prepared by the Committee on Commerce, Science, and Transportation of S. 2549, a bill also sponsored by Senator Lautenberg, with expedited suspension provisions identical to S. 2367, states:

The administrative suspension law required for the basic grant has been demonstrated to be [one of the] most effective measures for reducing the incidence of drunk driving fatalities. The Insurance Institute for Highway Safety recently completed a study on this point, "Fatal Crash Involvement and Law Against Alcohol-Impaired Driving." The study found administrative suspension laws currently in force to be the most effective of all the laws studied in reducing alcohol-related driving fatalities, and found a 9 percent reduction in alcohol-related fatalities attributable to such laws.

NHTSA agrees that administrative license suspension systems are effective countermeasures to drunk drivers,

because they assure prompt, mandatory license sanctions against all offenders. The agency has strongly endorsed the concept of administrative license suspensions and the enactment of these administrative license suspension laws. NHTSA also believes, however, that States should have the flexibility to develop the details of an administrative license suspension law to meet their individual needs, so the agency did not support the establishment of an inflexible Federal model for all States to follow.

However, Congress opted against flexibility. As is evident from a review of the legislation, Congress did not simply require that States provide for an administrative suspension or revocation law, but rather selected the particular model that States must use to qualify for section 410 funds. Unfortunately, the agency has no legal authority to modify or waive any of the statutory requirements. While 23 States and the District of Columbia currently have administrative suspension laws on the books, which appear to work quite effectively, it is our belief that few if any of these States currently meet the strict detailed standards established in the section 410 legislation. NHTSA proposes, in this notice, to provide some limited degree of flexibility, to the extent permitted by the statute, through the manner by which States may demonstrate compliance with this statutory criterion. This notice highlights below the most salient features of the applicable portions of the proposed regulation.

The terms "operating a motor vehicle while under the influence of alcohol" and "under the influence of alcohol while operating the motor vehicle" are used in paragraphs (A) and (B) of section 410(e)(1), and elsewhere in the legislation. The agency proposes to define these terms so that they apply to persons determined, by use of a chemical test, to have an alcohol concentration in the blood or breath of 0.10 percent or greater. Consistent with the definitions in the 408 incentive grant program, these terms would not include persons who refuse to submit to such a test. To ensure that all offenders that may be subject to suspension or revocation under a State's law are provided with the same level of due process protection, we propose to specify, in § 1313.5(a)(1)(i)(B), that refusers as well as other offenders are entitled to receive notice of their rights, including the right to an administrative review.

The statute requires that law enforcement officers serve offenders

with notice of their rights, including the right to an administrative review. In addition, it provides, in section 410(e)(1)(C), that States must provide for "due process of law, including the right to an administrative review," which takes place not later than 15 days after the individual receives notice (30 days if the State can show that meeting the 15-day requirement would impose a hardship on the State.)

Accordingly, as long as a State meets these requirements by providing offenders with proper notice and the right to an individualized administrative review which takes place within the time established by statute, the agency would presume that due process has been ensured. We request comments on whether it is believed that further guidance on the procedures necessary to ensure due process is required.

In an effort to simplify the regulatory language, we propose to avoid repeating the phrase "any 5-year period beginning after the date of the enactment of this section," or related phrases, in a number of places in the regulation that refer to the statutory criterion. Instead, this phrase would be included in the proposed definition of the term "repeat offender" and appropriate language would replace related phrases in § 1313.5 of the proposed regulation. Most importantly, the agency interprets this language in the Act to mean that an offender is an individual who has failed a chemical test or refused to submit to one after November 18, 1988. These individuals are considered to be repeat offenders if they have failed a chemical test or refused to submit to one on two or more occasions within a 5-year period, and if at least two of these incidents occurred after November 18, 1988.

The length of time for which suspensions must be served (or which must pass before an offender whose driving privileges are revoked may obtain a new license) is defined in paragraph (E) of section 410(e)(1). Like section 408 of the Highway Safety Act, section 410 provides that this period must be not less than 90 days for first offenders and not less than one year for repeat offenders. The Senate reports prepared by the Environment and Public Works and the Commerce, Science and Transportation Committees both state that the Secretary is expected, in promulgating implementing regulations, to provide for periods of "hard" suspension, during which time an offender is not allowed conditional driving privileges. The agency's regulation implementing the section 408 program provides, in 23 CFR 1309.3(f),

that first offenders (other than refusers) must receive a "hard" suspension for the first thirty days of their 90 day suspension period, and that repeat offenders (including repeat refusers) and first refusers must receive a "hard" suspension for the full one year or 90 days, respectively. The agency proposes to adopt this definition in 23 CFR 1313.3(i), so that the same periods apply to driver license suspensions and revocations in the section 410 program. For more information on the application of the section 408 definition, particularly with regard to the conditions under which restricted licenses or In-Vehicle Alcohol Testing Devices (IVAT's) may be used, see 53 FR 32375, 32377 (August 25, 1988).

Both the legislation and the proposed rule refer to "suspensions" and "revocations." Although these actions do differ, the two terms are defined in the same manner in the proposed regulation. If the driver's license of an offender is revoked, that individual must apply for a new driver's license to regain driving privileges. This step is not necessary if the driver's license of the offender is suspended, although some action may need to be taken, such as the payment of reinstatement fees. For the purpose of this criterion, the agency is concerned only that, under suspensions or revocations, offenders lose their driving privileges for the requisite periods of time. The section 410 statute does not, and the agency does not propose to, specify what actions offenders must take to regain driving privileges after these periods of time have passed, although NHTSA does not recommend that license reinstatement should occur automatically. With respect to driver's licenses, the term "suspension" as used in this notice should be read to pertain to both suspensions and revocations, wherever appropriate.

The time frames within which an administrative review must take place and the suspension, if any, must take effect are defined in paragraphs (C) and (F) of section 410(e)(1). These occurrences must take place within 15 days after the individual first received notice of the suspension and the right to have an administrative review, or within 30 days after the individual first received notice if the agency has determined that the 15-day requirement would impose a hardship upon the State. Individuals will generally receive notice, and lose possession of their driver's license at the time of arrest. Although individuals would lose possession of their driver's license at that time, they generally would not immediately lose

their driving privileges since they may be issued a temporary license. The agency believes individuals would receive notice and lose possession of their license at a later time only when an individual's chemical test results are not immediately available, such as when the State uses a laboratory to determine the results of chemical tests using blood or urine samples. Even in these circumstances, chemical test results would be obtained and, therefore, individuals would receive notice and lose possession of their license, within a matter of days after arrest.

The agency believes that States which meet all the basic criteria, but meet the 30 rather than the 15-day requirement, should be considered qualified for a section 410 basic grant. However, we wish to recognize, and provide incentives for States that go further, and provide administrative reviews and suspend driver's licenses within 15 days after offenders receive their notice. For this reason, we propose to award 20 percent basic grants to qualifying States that meet the 30-day but not the 15-day requirement, and 30 percent grants to qualifying States that provide administrative reviews and suspend driver's licenses within the 15-day period. The information that must be provided by States qualifying for a 20 percent basic grant, to establish hardship under the 30-day expedited suspension requirement, is discussed further below.

In a final rule dated August 25, 1988 (53 FR 32375), NHTSA created more flexibility in the section 408 program by providing the States with alternative methods for demonstrating compliance with the statutory criteria for that program. The agency proposes to offer similar flexibility from the start in the section 410 program, to the maximum extent practicable, while still ensuring compliance with the statutory criteria.

Whether the State is applying for a 20 or 30 percent basic grant, the agency believes that the first four elements of the expedited driver's license suspension requirement (§ 1313.5(a)(1)(i)(A)-(D) of the proposed regulation) must, necessarily, be demonstrated by submission of the State's law, regulation or binding policy directive. Under our proposal, we would not require data from any State, in either the first or in subsequent years, to demonstrate compliance with these elements of the criterion. With regard to the remaining two elements (§ 1313.5(a)(1)(i)(E) and (F) of the proposed rule), which cover the length of the suspension and the time within which the administrative review must take place and the

suspension must take effect, the agency proposes to allow States to qualify for 20 or 30 percent grants, as either "Law" or "Data" States, as they are permitted to do in demonstrating compliance with the "prompt suspension" criterion for the section 408 program (see 23 CFR 1309.5(a)(2) & (3), as amended).

The agency would consider a State to be a "Law" State in either case, for purposes of this criterion, if the terms of the State's laws, regulations, or binding policy directives, on their face, meet each element of the expedited suspension requirement. States would be considered to be "Data" States if the terms of the State's laws, regulations, or binding policy directives, on their face, meet each element of the expedited suspension requirement, with the exception of the elements described in § 1313.5(a)(1)(i) (E) and (F) of the proposed regulation, regarding the length of the suspension and the time within which the administrative review must take place and the suspension must take effect.

To demonstrate compliance in the first year it receives a 30 percent basic grant, a "Law" State would be required to submit only the law, regulation or binding policy directive itself governing its 15-day expedited suspension system requirement; the State would not be required to submit any data in that year. To comply with this criterion in subsequent years, the State would be required to submit data on the actual license suspension terms, although the agency would accept data showing that the State meets an average of these terms, or a plan to achieve these averages. In addition, the State must submit data demonstrating that the average time from notice to any administrative review and suspension does not exceed 15 days.

As with the section 408 implementing regulation (23 CFR 1309.5(a)(2)(iii)), data showing the average license suspension terms must include only the period of time actually ordered by the State. For example, the data must not reflect the period of time during which an individual is eligible to reapply for a driver's license, but simply fails to do so. In addition, the data must include license suspension terms only to the extent that they are actually completed. The State would be permitted to submit data based on a representative sample. By representative sample, the agency means that data should be obtained from all communities in the State or from a sample of communities representative of the State as a whole.

To demonstrate compliance for a 30 percent basic grant in both the first and in subsequent years, a "Data" State

would be required to submit its law, regulation, or binding policy directive governing its 15-day expedited suspension system. It must also submit data on the actual license suspension terms, although the agency would accept data showing that the State meets an average of these terms. A Data State would not have the option of submitting a plan showing how it intends to achieve these averages. In addition, the State must submit data demonstrating that the average time from notice to any administrative review and suspension does not exceed 15 days. Data showing the average license suspension terms must include only the period of time actually ordered by the State, and must include license suspension terms only to the extent they are actually completed. The State would be permitted to submit data based on a representative sample.

Consistent with the section 408 program, since the agency is providing increased flexibility by permitting States to show compliance through averages, we will be able to accept absolutely no deviations from the license suspension terms specified in the statute and the regulation from States that qualify based on data. For example, to demonstrate compliance with the 90-day license suspension term for first offenders (including both failures and refusers), a Data State that submits data which shows an 89-day average would not be eligible for funding.

States that would not qualify for a 30 percent basic grant, but wish to apply for a 20 percent basic grant, may also do so as Law or Data States.

To demonstrate compliance in the first year it receives a 20 percent basic grant, a "Law" State would be required to submit only the law, regulation or binding policy directive itself governing its 30-day expedited suspension system; the State would not be required to submit any data in that year. The State's law must provide that any administrative reviews are provided and driver's licenses are suspended within 30 days after the individual receives notice of his or her right to a review and of the suspension, and the State must explain the hardship that would be imposed by a 15-day administrative review and suspension requirement. To comply with this criterion in subsequent years, the State would be required to submit data on the actual license suspension terms, although the agency would accept data showing that the State meets an average of the license suspension terms, or a plan to achieve these averages. In addition, the State must submit data demonstrating that the average time from notice to any administrative review and suspension

does not exceed 30 days, and explain the hardship that would be imposed by instituting 15-day administrative reviews and suspensions. If a State seeks to qualify for a first year grant based upon a demonstration of hardship, it would be required to demonstrate hardship and submit a plan showing how it intends to meet the 15-day requirement. The State plan must demonstrate that it is striving to remove the remaining impediments and achieve a license suspension system that satisfies the 15-day requirement. In subsequent years, a State would be required to submit evidence showing that it has achieved considerable progress toward implementing that plan.

The agency believes that it is the intent of Congress that a State satisfy the 15-day period and that only in very unusual situations, unique to a particular State, would a State be able to demonstrate a hardship—that despite its best efforts, it cannot achieve the 15-day period. We would not consider, in determining whether a hardship would be imposed, potential benefits that would not be realized due to the lack of section 410 funding. To demonstrate that a hardship would be imposed, the State must show that unreasonable administrative, financial, legal or other burdens would result if it were to institute a procedure by which administrative reviews would take place and suspensions would take effect within 15 days. In most instances, the agency believes that hardship claims require more than a showing that current State law or administrative requirements preclude implementation of the 15-day period. The agency proposes to consider hardship claims, for example, in the event that extraordinary increases in personnel or Automated Data Processing costs would be needed for the State to meet the 15-day requirement. The agency requests that commenters suggest other costs or burdens they believe represent the kinds of unreasonable burdens that the agency should consider to be a hardship.

As stated earlier with regard to demonstrating compliance for a 30 percent grant, data showing the average license suspension terms must include only the period of time actually ordered by the State, and must include license suspension terms only to the extent they are actually completed. The State would be permitted to submit data based on a representative sample. By representative sample, the agency means that data should be obtained from all communities in the State or from a sample of communities representative of the State as a whole.

This is again parallel to the section 408 regulation (23 CFR 1309.5(a)(2)(ii)).

To demonstrate compliance for a 20 percent basic grant in both the first or in subsequent years, a "Data" State would be required to submit its law, regulation, or binding policy directive governing its 30-day expedited suspension system. It must also submit data on the actual license suspension terms, although the agency would accept data showing that the State meets an average of the license suspension terms. A Data State would not have the option of submitting a plan showing how it intends to achieve these averages. In addition, the State must submit data demonstrating that the average time from notice to any administrative review and suspension does not exceed 30 days, and explain the hardship that would be imposed by instituting 15-day administrative reviews and suspensions. Data showing the average license suspension terms must include only the period of time actually ordered by the State, and must include license suspension terms only to the extent they are actually completed. The State would be permitted to submit data based on a representative sample.

As noted above with respect to the 30 percent grant, since the agency is providing increased flexibility by permitting States to show compliance through averages, we will be able to accept absolutely no deviations from the license suspension terms specified in the statute and the regulation from States that qualify based on data.

The speed within which driver license suspensions take effect will determine whether a State is eligible for a 20 or a 30 percent basic grant. States must, in either case, have a self-sustaining drunk driving prevention program, and demonstrate compliance in the manner described below.

2. Self-sustaining drunk driving prevention program. Section 410(e) specifies that eligible States must provide also:

(2) for a self-sustaining drunk driving prevention program under which the fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

The agency believes the three most essential elements of this program are: (1) the State, through its communities, institutes a "comprehensive" drunk driving prevention program; (2) while the program may not be completely "self-sustaining," a significant portion of its costs is supported with non-Federal

funds; and (3) all of the fines or surcharges generated by drunk driving prevention programs, or an equivalent amount, are used for the program's continued operation.

The agency recognizes that different States have different needs. As Senator Gore stated in the floor debate on this issue, "smaller States may not be able to develop programs of the size and scope of larger States." 134 Congressional Record S17309 (Oct. 21, 1988). The agency believes that a model comprehensive program should contain a broad range of drunk driving prevention activities and approaches. While we encourage the States to continually strive for increased comprehensiveness, for the purpose of this criterion, NHTSA proposes to define the term "comprehensive drunk driving prevention program" to include only those features and components which we consider absolutely essential. These components and features are reflected in the proposed definition of the term "comprehensive drunk driving prevention program" in § 1313.3(b).

We believe most of these components and features need no explanation. Regarding the second component, on DWI prosecution, adjudication and sanctioning, NHTSA estimates that approximately 1.5% to 2% of licensed drivers could be arrested annually in a high arrest area. Those States that have not experienced increased levels of DWI arrests may wish to use these figures for planning purposes.

To demonstrate that they have "comprehensive" programs, we propose to require that States describe their criteria and procedures for reviewing community drunk driving prevention programs. The criteria that States use to evaluate whether these programs are comprehensive must meet or exceed the agency's regulatory definition of the term cited above. In determining a State's eligibility for a basic grant, under this criterion, the agency does not propose to review individual community programs or require that States report the number of community programs that qualify. However, we would hope that, in the future, an increased number of communities will qualify for revenues and that, with these revenues, community programs will become more comprehensive.

Although the Act requires that eligible States must have "self-sustaining" programs, it is clear that Congress did not expect that States would be required to show that their costs were covered completely in order to qualify. Congress did expect that States must show, however, that all fines or surcharges collected from convicted drunk drivers,

or an equivalent amount, be returned or provided to the State's community level drunk driving prevention programs, that these non-Federal revenues are made available to continue the operation of community drunk driving prevention programs, and that a significant portion of the costs of operating these programs are supported with non-Federal funds. To determine whether States are meeting these requirements, the agency is proposing to require that States describe their procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs, submit data showing the aggregate amount of fines or surcharges actually collected and the aggregate amount of revenues actually returned or provided to these programs, and certify that these revenues are being used to continue the operation of comprehensive drunk driving prevention programs and that a significant portion of the costs of these programs are supported with non-Federal funds.

We recognize that it may take time before program improvements made in the States actually result in increased revenues. We, therefore, propose to leave the term "significant" undefined in our regulation, and permit the States to establish their own definitions. We are also concerned that, if we were to establish a numerical measure for determining significance, the objective of creating self-sustaining programs could serve to undermine the more important goals of increasing the breadth and quality of comprehensive community programs, and encouraging local initiative.

NHTSA recognizes that many activities conducted by the State, such as enforcement efforts by the State highway patrol, directly benefit, and for the purpose of this criterion should be considered part of, a community's comprehensive drunk driving prevention program. For this reason, we propose to accept, under the regulation, a self-sustaining program which returns or provides revenues either directly to communities which have comprehensive drunk driving prevention programs, or to activities conducted by the State for the benefit of those communities. Section 1313.5(a)(2)(iii) of the proposed regulation, which is based on 23 CFR 1250.4(c) of NHTSA's section 402 implementing regulation, describes the conditions under which non-Federal funds expended for activities conducted by the State for the benefit of communities may be considered to have been returned or provided to the community. We request comments on whether this alternative is appropriate.

and on whether any additional requirements should be established to assure that communities receive a sufficient amount of revenues.

As noted above, the Act defines the mechanism for meeting the goals of comprehensiveness and self-sufficiency. It provides that all of the fines or surcharges generated by drunk driving prevention programs, or an equivalent amount, are used for the program's continued operation. More specifically, "fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles."

Congress used, as its model, a program that was established in New York State. See, S. Rept. 100-441. Under New York's program, all fines, penalties and forfeitures collected by a county from violations of the State's law prohibiting persons from operating a motor vehicle while under the influence of alcohol shall be paid to the State Comptroller, and then returned to the county if its drunk driving program is approved. County programs are approved by the State Motor Vehicle Commissioner based on a number of factors, including the interrelationship of the program with existing drunk driving related programs in law enforcement, prosecution, adjudication, education and other areas, and the avoidance of duplication of existing rehabilitation or other programs funded or operated by either the State or a municipality. Congress did not require, however, that States use this particular model in order to qualify, and it is premature at this stage of the rulemaking process to determine whether New York has a qualifying program.

NHTSA wishes to provide the States with sufficient flexibility to develop their own models for self-sustaining programs, provided the goals described above and the statutory criterion are satisfied. To determine compliance with this portion of the criterion, NHTSA believes it must review and, therefore, proposes that States submit, a copy of the law, regulation or binding policy directive governing the State's self-sustaining drunk driving prevention program, which requires that fines or surcharges must be imposed, and a description of the State's procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs.

Under the agency's proposed definition of the term "fines or

surcharges collected" from individuals convicted of operating a motor vehicle while under the influence of alcohol, "fines" would include both fines and penalties collected. "Surcharges" would include additional assessments collected over and above the fines and penalties, but it would not include user-type charges, such as rehabilitation, treatment, and license reinstatement fees. In addition, only fines or surcharges imposed on *convicted* individuals are covered by this provision. Based on the statutory language in section 410(e)(2), the proposed regulation provides that the revenues would not include fines or surcharges collected from individuals who lose their license administratively, but are not *convicted* of operating a motor vehicle while under the influence of alcohol. NHTSA believes it may be appropriate for States to assess fines and surcharges when persons lose a driver's license administratively, but the section 410 statute does not permit the agency to take those moneys into account.

NHTSA proposes to permit States to demonstrate compliance with this portion of the criterion by showing that *either* fines *or* surcharges are returned to qualifying communities. However, we request comments on whether, to ensure that a significant portion of the costs of operating comprehensive drunk driving prevention programs is funded with non-Federal moneys, NHTSA should require that both or the greater of the two sources should be used for these purposes.

Rather than returning the actual fines or surcharges to communities, under this proposal, States would have the option of providing an equivalent amount from other non-Federal revenues through the State's ordinary appropriations process. Congress established this option when it became aware that certain States are constitutionally restricted as to their use of fine revenues (e.g., prohibited for any purpose other than education). Accordingly, States that are unable or choose not to return the actual fines or surcharges collected from individuals convicted, can provide non-Federal funds from other sources (such as alcoholic beverage taxes or fees) to communities that have comprehensive drunk driving prevention programs through the State's ordinary appropriations process. The agency requests comments on whether the States intend to use other mechanisms for providing funds to communities, and whether the method for demonstrating compliance with this element of the statutory criteria, described herein,

would need to be altered for these States.

With regard to States that choose to provide an equivalent amount of non-Federal funds to qualifying communities, NHTSA proposes to permit States to demonstrate compliance with this portion of the criterion by showing that an amount equivalent to *either* the State's fines *or* surcharges are provided to qualifying communities. However, as we did above, with regard to States that return the actual fines or surcharges to these communities, we request comments on whether, to ensure that a significant portion of the costs of operating comprehensive drunk driving prevention programs is supported with non-Federal funds, NHTSA should require that an amount equivalent to both or the greater of the two sources should be used for these purposes.

We note that, in New York, the revenues collected within a county are returned to that county once its drunk driving program is approved. The agency proposes that, like New York's system, States with self-sustaining programs must return or provide fines or surcharges collected within a community, or an equivalent amount, to that community once it qualifies with a comprehensive program. The agency does not propose to mandate that States must return or provide fines or surcharges collected within communities that do not qualify with such a program, or an equivalent amount. In addition, the agency has not proposed to define the term "community" in its regulation. While it may be effective to evaluate programs on a county basis in one State, another State may need to evaluate community programs using a different basis. In fact, a State may wish to define communities in a manner that is not uniform throughout the State, or to recognize communities which cross State lines. The agency does not believe grant qualification should be jeopardized on this basis. Accordingly, we believe it is best to leave that decision to each individual State.

Under the proposed regulation, States returning fines or surcharges collected to qualifying communities must submit data showing the aggregate amount of fines or surcharges actually collected and returned. States providing an equivalent amount would have to show the aggregate amount of fines or surcharges actually collected, the amount of other non-Federal funds actually provided to communities and the source of those other funds. In addition, as stated previously, to qualify for a grant, States must certify that these revenues are being used to continue the

operation of comprehensive drunk driving programs and that a significant portion of the costs of operating these programs are supported with non-Federal funds.

As stated earlier, although Congress used New York's program as a model in enacting the self-sustaining program requirement of section 410, NHTSA wishes to provide the States with sufficient flexibility to develop their own models for self-sustaining programs, provided the goals described above and the statutory criterion is satisfied. For example, New York has a centralized system, under which fines, penalties and forfeitures are collected and paid to the State Comptroller, and then returned to counties with approved programs. The agency does not wish to require that decentralized and mixed States, which provide that communities retain the revenues collected, change their entire systems in order to qualify for this program if they otherwise meet the criterion's requirements and Congressional goals. However, under such a system, where a community may retain revenues whether or not it has a comprehensive drunk driving program and may not be required to account for its expenditures, additional requirements may need to be established to ensure qualification. Further, NHTSA is concerned that there may be less of an incentive in these States for communities to develop comprehensive drunk driving prevention programs. We request comments on whether State systems that are decentralized or mixed should be accepted as self-sustaining under this criterion, and suggestions regarding the additional information, if any, that States with these systems must submit to demonstrate compliance.

Supplemental Grant Criteria

In section 410(f), the Act provides for four separate supplemental grant programs. States that are eligible for basic grants and also meet the supplemental criteria, may receive one or more of these grants. These supplemental grant programs include: (1) Mandatory blood alcohol concentration testing programs for drivers involved in fatal and serious crashes who are believed to have committed an alcohol-related traffic offense; (2) an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverage; (3) a program which makes it unlawful to possess an open container or to consume an alcoholic beverage in a motor vehicle and (4) a suspension of registration and return of license plate program for repeat offenders and individuals convicted of

driving while their driver's license is under suspension or revocation for an alcohol-related offense.

Under the statute, a State that is eligible for the open container grant may receive up to 25 percent of its FY 1989 section 402 highway safety grant apportionment. A State that is eligible for the other supplemental grant programs may receive up to 10 percent of its FY 1989 section 402 apportionment for each grant.

The elements of these supplemental grant criteria, and the manner in which State must demonstrate compliance are explained fully below:

1. Mandatory Blood Alcohol Concentration Testing Programs.

Section 410(f)(1) of the Act specifies that eligible must provide for:

mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in [a crash] resulting in the loss of human life or * * * serious bodily injury, has committed an alcohol-related traffic offense.

In other words, if a law enforcement officer has probable cause to believe a driver of a motor vehicle involved in the fatal or serious injury crash has committed an alcohol-related traffic offense, the State must provide for mandatory testing of that driver. The agency believes that this program was meant to cover both fatally injured and surviving drivers.

The Act requires that the Secretary determine what is meant by "serious bodily injury." The agency proposes to adopt, as its definition for this term, "an injury, other than a fatal injury, which prevents injured persons from walking, driving or normally continuing the activities they were capable of performing before the injury occurred." This definition is essentially the same as the American National Standards Institute's definition of the term, "incapacitating injury," ANSI D16.1-1983, 2.3.3, which has been adopted by NHTSA's Fatal Accident Reporting System and many States. We are aware, from a preliminary review of State laws, that some States provide for BAC testing even when the crash does not result in serious bodily injury or death. These States may provide for testing if any injury results. This broader coverage would, of course, be acceptable under the proposed definition. Others, however, provide for BAC testing of drivers only when crashes result in fatalities or injuries likely to cause a fatality. These States would have to expand the coverage of their laws to qualify under the agency's proposed definition.

The agency is also aware that the States that provide for post-crash BAC testing generally *permit*, but do not *require*, that tests be administered. If a State *requires* that testing be conducted, the agency proposes to permit the State (which would be considered to be a "Law" State under this particular grant) to demonstrate compliance in the first year it receives the grant by submitting only a copy of its law, regulation or binding policy directive governing the State's mandatory BAC testing program. The State would not be required to submit data to demonstrate compliance in the first fiscal year. Data would need to be submitted in subsequent years, however, showing the number of drivers involved in fatal and serious bodily injury crashes and that, when there was probable cause to believe that the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State could provide the necessary data based on a representative sample.

A State that does not require testing (a "Data" State under this particular grant) would be required to demonstrate compliance in the first and in subsequent years by submitting a copy of its law, regulation or binding policy directive governing the State's BAC testing program, plus data showing the number of drivers involved in fatal and serious bodily injury crashes and that, when there was probable cause to believe that the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol concentration and the results were reported to the State. The State could provide the necessary data based on a representative sample. While a data State's law would not need to make post-crash BAC testing mandatory, it would need to give law enforcement officers authority to conduct this testing and establish all other elements of this criterion.

The agency proposes to award the full 10 percent to States that qualify under the mandatory blood alcohol concentration testing program.

2. Program for Prevention of Operators under 21 from Obtaining Alcoholic Beverages.

Section 410(f)(2) of the Act specifies that eligible States must provide for:

an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages * * *

The terms "alcoholic beverage" and "motor vehicle," which are used to describe the qualifications for receiving this grant, are defined by statute. The

statutory definitions are reflected in § 1313.3 of the proposed regulation.

Congress provided, in the statute, that a State's effective system "may include the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals 21 years of age and older." Easily distinguishable licenses might, for example, use a different colored background, be stamped with the word "MINOR" or include a profile photograph of under-21 drivers, as compared with a full-face photograph of individuals 21 years of age and older.

The agency believes the use of easily distinguishable licenses for underaged drivers is a necessary element for an effective program and, therefore, proposes to require that States use such licenses to qualify for this supplemental grant. However, we do not believe that an easily distinguishable license alone makes a State's program effective. An effective system must be comprehensive and include a number of elements which, together, prevent operators under 21 from obtaining alcoholic beverages.

Under our proposal, in order to qualify for this supplemental grant, a State must issue easily distinguishable licenses to underaged drivers, and make it unlawful for a person who is less than 21 years of age to purchase or publicly possess any alcoholic beverage or for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age. The State must also provide for meaningful penalties for both the underaged person and the provider of the alcoholic beverage, and maintain an effective and highly visible enforcement program. In addition, the State must have or put in place a Statewide training program for servers, vendors and its law enforcement community, and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages.

In requiring that States prohibit public possession and both the purchase and the provision (by sale or otherwise) of alcoholic beverages to minors, we recognize that the agency is proposing to go beyond what was mandated under the National Minimum Drinking Age Act (NMDA), 23 U.S.C. 158. The NMDA covers only the purchase and public possession of alcoholic beverages by minors and, under the implementing regulation (23 CFR Part 1208, see 51 FR 10380, March 26, 1986), the Department has found that laws which prohibit public possession and either the sale or purchase of alcoholic beverages satisfy this requirement. (We would continue to

recognize, as we do under the NMDA, a limited number of exceptions, such as for religious purposes, and valid defenses for providers, such as lack of knowledge and good faith.) The agency is also exceeding the requirements of the National Minimum Drinking Age Act by proposing to require meaningful penalties, as none were mandated under that Act. Based on the knowledge that has been gained in attempts to address illegal substance abuse, we believe effective programs must be directed at providers as well as users of these substances. In addition, we doubt that any State can truly demonstrate that it has an effective program if efforts are not directed at both supply and demand, or if the penalties imposed for violating the law are not meaningful. Moreover, we believe these additional requirements reflect the purpose of the section 410 grant program, which was established as an incentive for States that not only prohibit minors from obtaining alcoholic beverages, but have "an effective system" for doing so.

The agency is considering and requests comments on whether to specify, in the regulation, the particular penalties that must be imposed. The current research suggests that license-based penalties are effective as both a specific and a general deterrent of drinking and driving, and the State of North Carolina has provided the agency with evidence of significant reductions in the involvement of underaged drivers in alcohol-related crashes following implementing of laws that require loss of driving privileges for illegal purchase of alcohol and other offenses. Other penalties, however, may be equally effective.

With regard to the underaged individual, our preliminary review of State laws reveals that a number of States provide that these individuals may temporarily lose driving privileges for purchasing or publicly possessing alcoholic beverages. Under these laws, the loss of driving privileges occurs without regard to the individual's alcohol concentration or the use of a motor vehicle in the purchase or public possession of alcohol, and generally occurs after conviction rather than administratively. Those States which provide for a minimum license suspension term require that the suspension last for a period of not less than either thirty or sixty days. We request comments on whether either of these minimum driver license suspension terms or other penalties would be meaningful to individuals who are less than 21 years of age and would contribute to an effective system for preventing underage drinking.

With regard to the provider of alcoholic beverages, our preliminary review of State laws reveals a variety of penalties ranging from liquor license-based sanctions, fines or penalties which vary according to the type of provider (private individual, small or large establishment, employed server) and may escalate with subsequent offenses, and imprisonment where providing alcoholic beverages to minors constitutes a criminal offense. The agency requests comments on whether these or other penalties (such as a point system for licensed establishments under which points would be considered by the licensing authority at the time of license renewal, or dram shop liability) would be meaningful to providers of alcoholic beverages and would contribute to an effective system for preventing underage drinking.

To demonstrate compliance in the first and in subsequent years, the State would be required to submit a law, regulation of binding policy directive which makes it unlawful for a person who is less than 21 years of age to purchase or publicly possess any alcoholic beverage or for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age, and which provides for meaningful penalties for both the underaged individual and the provider of the alcoholic beverage. The State would also be required to submit sample driver's licenses issued to persons both under and over 21 years of age. In addition, the State would have to submit data demonstrating that it maintains an effective and highly visible enforcement program, and has or plans to put in place a Statewide training program for servers, vendors and its law enforcement community, and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages. The State must show progress in addressing this problem in subsequent years. The agency does not propose to specify the particular items of information that States must submit in support of these aspects of its system. However, some examples of information the agency might consider include: the number and the average period of time that driver or liquor licenses are actually suspended in the State for the purchase, sale or public possession of alcoholic beverages by persons under the age of 21; The amounts of fines or penalties assessed and collected and other penalties imposed and served for this type of violation; the amount of time and resources dedicated to the enforcement

of this program; the number of alcohol-related fatal and non-fatal crashes which involved an underaged driver; the number of underaged drivers charged and found to be operating a motor vehicle while under the influence of alcohol; examples of training and promotional materials or electronic and print advertising developed and used and an estimate of the exposure obtained in the State (through dollar value and/or the number of people reached from each target audience).

The agency requests comments, particularly from the States, regarding whether we should provide further guidance on, or specifically identify in the regulation, the particular items of information that States must submit to demonstrate compliance with this requirement.

The agency proposes to award the full 10 percent to States that have a qualifying program for prevention of operators under 21 from obtaining alcoholic beverages.

3. Program Making Unlawful Open Containers and Consumption of Alcohol in Motor Vehicles. Section 410(f)(3) of the Act specifies that eligible States must:

make unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except—

(A) as allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(B) as otherwise specifically allowed by such State, with the approval of the Secretary, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger area.

The terms "alcoholic beverage," "motor vehicle" and "open alcoholic beverage container," which are used to describe the criteria for this grant, are defined by statute. The statutory definitions are reflected in § 1313.3 of the proposed regulation.

The Act provides that a State which meets the criteria for this grant may receive up to 25 percent of its FY 1989 section 402 apportionment. As stated earlier in this notice, the agency proposes to award a grant of 10 percent of this apportionment, rather than the full 25 percent, to States under certain circumstances. States would be able to qualify for the full 25 percent, however, by submitting additional information not required to qualify for the 10 percent grant.

To demonstrate compliance for the 10 percent grant, in the first and in subsequent years, the State would be required to submit only a law, regulation or binding policy directive which provides for each element of the unlawful open container and consumption of alcohol requirement. States must prohibit both the possession of an open container and the consumption of alcoholic beverages in a motor vehicle to qualify. The State would not be required to submit any data, but would have to identify any exceptions to its open container and consumption law, and provide sufficient justification for the agency to approve any exception not specifically permitted by the Federal statute. The statute permits an exception for persons (other than the driver) in the passenger area of a motor vehicle designed to transport more than 10 persons (bus) while being used to provide charter transportation of passengers.

To demonstrate compliance for the 25 percent grant, in the first and in subsequent years, the State would be required to submit the information identified above. In addition, the State would have to show that its law provides for meaningful penalties, and submit data demonstrating that the State maintains an effective and highly visible enforcement program.

The agency is considering and requests comments on whether to specify, in the regulation, the particular penalties that must be imposed. As stated earlier, the current research suggests that license-based penalties are effective as both a specific and a general deterrent of drinking and driving. Other penalties, however, may be equally effective.

Our preliminary review of State open container and consumption laws reveals a variety of penalties, which include fines, imprisonment and, in some cases, the suspension of a driver's license. The penalties, in most States, escalate for repeat offenders, and those States which provide for a driver's license suspension, generally do not impose a minimum suspension term. The agency requests comments on whether these or other penalties (such as a mandatory driver's license suspension for a minimum of thirty days) would be meaningful to individuals who unlawfully possess open containers or consume alcoholic beverages in motor vehicles.

The State would have to show progress in subsequent years. The agency does not propose to specify the particular items of information that States must submit in support of their enforcement and public information

efforts, or to demonstrate progress. However, some examples of information the agency might consider include the number and the average period of time for which licenses are actually suspended under the State's open container and consumption laws, the amount of time and resources dedicated to the enforcement of this program, examples of promotional materials or electronic and print advertising developed and used and an estimate of the exposure obtained in the State (through dollar value and/or the number of people reached from the target audience).

The agency requests comments, particularly from the States, regarding whether we should provide further guidance on, or specifically identify in the regulation, the particular items of information that States must submit to demonstrate compliance with this requirement.

4. Suspension of Registration and Return of License Plate Program. Section 410(f)(4) specifies that eligible States must provide for:

the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who—

(A) has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period following the date of the enactment of this section; or

(B) has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for * * * an [alcohol-related traffic] offense.

A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual, including any family member of the convicted individual, and any co-owner of the motor vehicle, who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

According to Senate Report 100-594 on S. 2549, this supplemental grant was established by Congress in recognition of its concern that many alcohol-related traffic offenders continue to drive even after their driver's licenses have been suspended. The Committee on Commerce, Science, and Transportation estimates in its report, and the agency agrees, that between 50 and 60 percent of those individuals who have had their licenses revoked or suspended, nonetheless continue to drive. In addition, NHTSA believes the problem may well increase in the future as the use of driver license sanctions continues to grow.

The statute provides for the suspension of the offender's registration and the return of the offender's license plates to the State. The agency is aware that some States provide for confiscation procedures, while others provide instead for a license plate impoundment process. Like the revocation of a driver's license, if the license plates of a motor vehicle are confiscated, the individual must apply for new license plates before that vehicle can be returned to service. As with a driver's license suspension, this step is not necessary if the license plates of the vehicle are impounded, although some action may need to be taken, such as the payment of reinstatement fees. We believe there is less of an administrative burden to States using a confiscation procedure. Under § 1313.3(j) of the proposed regulation, the agency would leave the choice to the States and accept either method of suspending registrations and returning license plates to the State.

The Act does not specify the period of time for which offenders must lose their motor vehicle registration and license plates. The agency proposes to require, in § 1313.3(j) of the regulation, that States reinstate offenders' registration and release their license plates only after they have completed their *driver's license* suspension or revocation term(s). For example, if the offender is found to be driving with a suspended license and has, at that time, served five months of a one-year suspension term, the individual's registration would have to be suspended and his or her license plates returned to the State for the remaining seven months of the one-year term. In addition, if the individual's driver's license suspension term is extended for an additional year for this offense under State law, the registration and license plates must not be released to the offender until after this additional term has also been completed. States would, of course, be at liberty to impose more stringent penalties. The agency requests comments on this aspect of its proposal.

The statutory criterion for this supplemental grant requires that States impose the penalties identified in the Act on individuals who have been *convicted* on more than one occasion of alcohol-related traffic offenses within the time period specified or *convicted* of driving while their driver's license is suspended or revoked due to a *conviction* of an alcohol-related traffic offense. To determine whether a State complies, therefore, the agency proposes to consider only whether the registration must be suspended and the license

plates returned to the State for these particular offenses. We would not consider, for example, penalties for the following offenses: administrative loss of license on more than one occasion for alcohol-related traffic offenses when there was no conviction, or conviction of driving while the offender's license is under suspension or revocation for a non-alcohol-related traffic offense. States would of course be free to impose these sanctions for offenses that are not covered by section 410.

To qualify, the registration of "any motor vehicle owned" by the offender must be suspended and the license plates of these vehicles returned to the State. The agency believes an offender need not be driving his or her motor vehicle at the time of the offense for this penalty to apply to motor vehicles that he or she owns. In addition, we believe the State must impose these penalties on *all* vehicles owned by the offender to meet the statutory criterion. By "own," we mean that the offender's name appears on the motor vehicle's registration or title.

Under section 410, a State may provide limited exceptions, on an individual basis, to avoid undue hardship to any individual, such as a family member of the convicted individual or any co-owner of the motor vehicle, who is completely dependent on the motor vehicle for the necessities of life. In its report on S. 2549, the Committee on Commerce, Science and Transportation stated, "it is the intent of the Committee that the Secretary, in issuing implementing regulations, should take a flexible approach to this criterion. The States should be permitted to strike a balance between the need to prevent the drunk driver from driving and the needs of the family for transportation."

NHTSA had previously attempted to define "hardship" circumstances in the section 408 program. When the agency first issued its implementing regulation, it specified certain conditions under which hardship, restricted or conditional driver's licenses could be issued to offenders when a "hard" suspension was not required. In the August 25, 1988 final rule, amending this regulation the agency abandoned this approach as unnecessarily restrictive to the States. To ensure that the availability of these restricted licenses did not undermine the driver's license suspension requirements, however, we retained the condition that such licenses be issued in accordance with Statewide published guidelines developed by the State, and in exceptional circumstances specific to the offender. The agency proposes to include a similar generic restriction on

the circumstances in which a State may release license plates to individuals to avoid undue hardship. In addition, the exceptions may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

To avoid any confusion, we also propose to state specifically, in the regulation, that while exceptions may be made to avoid undue hardship for individuals which include a family member or a co-owner of a motor vehicle, an exception may not be made to avoid undue hardship for the offender.

To demonstrate compliance in the first year a State receives this grant, the State must submit a copy of its law, regulation or binding policy directive governing its suspension of registration and return of license plate program. The State need not submit data to obtain funding under this grant in the first fiscal year. The State's law, regulation or binding policy directive (which may include Statewide published guidelines), however, must establish the conditions under which license plates may be released by the State and provide that releases are made in exceptional circumstances specific to the offender's motor vehicle. In addition, the agency must be able to determine, based on the information provided, that these exceptions do not result in unrestricted reinstatement of registrations or unrestricted releases of license plates. As the Senate Committee on Commerce, Science and Transportation pointed out, in Senate Report 100-594, Minnesota's law provides for special and distinctive license plates to be issued when a hardship exception is allowed with regard to an offender's motor vehicle. The Committee stated, and the agency agrees, that this may be one, although not the only, method of avoiding undue hardship, while attempting to prevent abuses by offenders. NHTSA reserves judgment on whether other aspects of the Minnesota law would be sufficient to qualify for this supplemental grant program.

In subsequent years, a State would be required to submit, in addition to the information described above, data showing the number of registrations suspended and license plates returned, that the average length of suspension terms meets the regulatory definition, and the number, reasons for and conditions under which hardship exemptions were granted. The State would be permitted to provide the necessary data based on a representative sample.

The agency proposes to award the full 10 percent to States that have a qualifying suspension of registration and return of license plate program.

Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by July 26, 1989. The agency has not provided a longer comment period in order to meet the statutory deadline for issuing its final rule. To expedite the submission of comments, simultaneous with the issuance of this notice NHTSA will mail copies to all Governors and Governors' Representatives for Highway Safety.

All comments received before the close of business on the comment closing date, will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 89-02; Notice 1 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it would have no federalism implication that warrants the preparation of a federalism assessment. The grant programs established by section 410 are entirely optional for the States. While many of the eligibility requirements are highly restrictive, they are mandated by the section 410 statute.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures, because it would have a substantial impact on State and local governments. A preliminary evaluation of the impacts of this proposal has been prepared and placed in Docket 89-02; Notice 1. Any interested person may obtain a copy of this preliminary evaluation by writing to NHTSA's Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this proposed rule on small entities. Based on the evaluation, I certify that this rule would not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this proposal that States retail and report to the Federal government information which demonstrates compliance with drunk driving prevention incentive grant criteria, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements have been submitted to OMB for approval, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

The agency has also analyzed this proposed action for the purpose of the National Environmental Policy Act. The agency has determined that this action would not have any effect on the human environment.

List of Subjects in 23 CFR Part 1313

Alcohol, Drugs, Grant programs, Transportation, Highway safety.

In accordance with the foregoing, NHTSA proposes the addition of Part

1313 of Title 23 of the Code of Federal Regulations as follows:

PART 1313—INCENTIVE GRANT CRITERIA FOR DRUNK DRIVING PREVENTION PROGRAMS

Sec.

- 1313.1 Scope.
- 1313.2 Purpose.
- 1313.3 Definitions.
- 1313.4 General requirements.
- 1313.5 Requirements for a basic grant.
- 1313.6 Requirements for supplemental grants.
- 1313.7 Award procedures.

Authority: 23 U.S.C. 410.

§ 1313.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 410, for awarding incentive grants to States that adopt and implement comprehensive drunk driving prevention programs which are self-sustaining and include measures that will improve the effectiveness of the enforcement of State drunk driving laws.

§ 1313.2 Purpose.

The purpose of this part is to encourage States to adopt and implement comprehensive drunk driving prevention programs which include measures that will discourage individuals from operating motor vehicles while under the influence of alcohol. The criteria established are intended to ensure that the State drunk driving prevention programs for which incentive grants are awarded are self-sustaining, and meet or exceed minimum levels designed to improve the effectiveness of the enforcement of State drunk driving laws.

§ 1313.3 Definitions

(a) "Alcoholic beverage" has the meaning given such term in section 1208.3 of this title, which implements section 158(c) of the National Minimum Drinking Age Act, 23 U.S.C. 158.

(b) A "comprehensive drunk driving prevention program" means a program that reflects the complexity and totality of the State's alcohol traffic safety problems, incorporates multiple approaches to these problems over a sustained period of time and ensures that public and private entities work in concert to address these problems. The program must include, at a minimum, the following components:

- (1) Regularly conducted, peak-hour DWI enforcement efforts consisting of measures, such as roadside sobriety checkpoints or special DWI patrols;
- (2) DWI prosecution, adjudication and sanctioning resources adequate to handle increased levels of DWI arrests;

(3) Other programs directed at forms of prevention other than enforcement and adjudication activities, such as school, worksite or community education; designated driver programs; transportation alternatives; responsible alcohol service programs; server training; or treatment programs; and

(4) A public information program designed to make the public aware of the problem of drunk driving and of the above efforts in place to address it.

(c) "Fines or surcharges collected" means all fines and penalties or additional assessments collected, but it does not include user-type fees.

(d) "Motor vehicle" has the meaning given such term in § 659.5(c) of this title, which implements 23 U.S.C. 154, the National Maximum Speed Limit Act.

(e) "Open alcoholic beverage container" means any bottle, can, or other receptacle which: (1) Contains any amount of an alcoholic beverage, (2) Is open or has a broken seal or (3) The contents of which are partially removed.

(f) "Operating a motor vehicle while under the influence of alcohol" or "under the influence of alcohol while operating the motor vehicle" means operating a vehicle while the alcohol concentration in the blood or breath is 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath, as determined by chemical or other tests.

(g) "Repeat offender" means any person who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and to whom is administered one or more chemical tests to determine whether the individual was under the influence of alcohol while operating the motor vehicle and who is determined, as a result of such test, to be under the influence of alcohol, or who refuses to submit to such a test as proposed by the officer, more than once in any 5-year period beginning after November 18, 1988.

(h) "Serious bodily injury" means an injury, other than a fatal injury, which prevents injured persons from walking, driving or normally continuing the activities they were capable of performing before the injury occurred.

(i) With regard to an individual's driver's license, "suspension" or "revocation" means:

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in

accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year.

(j) With regard to an individual's registration and license plates, "suspension" and "return" means the temporary debarring of the privilege to operate or maintain a particular registered motor vehicle on the public highway and the confiscation or impoundment of the motor vehicle's license plates for not less than the term(s) for which the individual's driver's license will be under suspension or revocation.

§ 1313.4 General requirements.

(a) Certification requirements. To qualify for a grant under 23 U.S.C. 410, a State must, for each year it seeks to qualify:

(1) Submit an application to NHTSA, 400 Seventh Street, SW., Washington, DC 20590 demonstrating that it meets the requirements of § 1313.5 and, if applicable, § 1313.6

(2) Submit a certification to NHTSA, 400 Seventh Street, SW., Washington, DC 20590 that:

(i) It has a drunk driving prevention program that meets those requirements,

(ii) It will use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of drunk driving prevention programs,

(iii) It will administer the funds in accordance with 49 CFR Part 18 and OMB Circulars A-102 and A-87, and

(iv) It will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1987 and 1988 (either State or Federal fiscal year 1987 and 1988 can be used); and

(3) After being informed by NHTSA that it is eligible for a grant, submit, within 120 days, to the agency a drunk driving prevention plan for up to three years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grant and that provides the necessary information, identified in § 1313.5 and § 1313.6, to demonstrate that the program comply with the

applicable criteria. The plan, must also describe how the specific supplemental criteria adopted by a State are related to the State's overall drunk driving prevention program.

(b) Limitation on grants. A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant, under § 1313.5, shall not exceed 30 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(2) The amount received as a supplemental grant for a mandatory blood alcohol concentration testing program, under § 1313.6(a), shall not exceed 10 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(3) The amount received as a supplemental grant for a program for prevention of operators under 21 from obtaining alcoholic beverages, under § 1313.6(b), shall not exceed 10 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(4) The amount received as a supplemental grant for a program making unlawful open containers and consumption of alcohol in motor vehicles, under § 1313.6(c), shall not exceed 25 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(5) The amount received as a supplemental grant for a suspension of registration and return of license plate program, under § 1313.6(d), shall not exceed 10 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(6) In the first fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 75 percent of the cost of its drunk driving prevention adopted pursuant to 23 U.S.C. 401;

(7) In the second fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 50 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410; and

(8) In the third fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410;

§ 1313.5 Requirements for a basic grant.

(a) To qualify for a basic incentive grant of 30 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement the following requirements:

(1)(i) An expedited driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol which requires that:

(A) When a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense and such individual is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer serve such individual with a written notice of suspension or revocation of the driver's license of such individual and take possession of such driver's license;

(B) The notice of suspension or revocation referred to in paragraph (a)(1)(i)(A) of this section provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of an individual for operating a motor vehicle while under the influence of alcohol or refusing to submit to a chemical test and specify any rights of the individual under such procedures;

(C) The State provide, in the administrative procedures referred to in paragraph (a)(1)(i)(B) of this section, for due process of law, including the right to an administrative review of a driver's license suspension or revocation;

(D) After serving notice and taking possession of a driver's license in accordance with paragraph (a)(1)(i)(A) of this section, the law enforcement officer immediately report to the State entity responsible for administering driver's licenses all information relevant to the action taken in accordance with this paragraph;

(E) In the case of an individual who, after November 18, 1988, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer, provides for:

(1) The suspension of the driver's license of such individual for a period of not less than 90 days if the individual is a first offender; and

(2) The suspension or revocation of the driver's license of such individual for a period of not less than 1 year if the individual is a repeat offender; and

(F) The administrative review referred to under paragraph (a)(1)(i)(C) of this section shall take place and the suspension and revocation referred to under paragraph (a)(1)(i)(E) of this

section take effect not later than 15 days after the individual first received notice of the suspension or revocation.

(ii)(A) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 15-day expedited suspension system requirement.

(B) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (a)(1)(ii)(A) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (a)(1)(i)(F) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1313.3(i), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages.

(C) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 15-day expedited suspension system criterion.

(iii)(A) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 15-day expedited suspension system requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (a)(1)(i)(F) of

this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(B) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 15-day expedited suspension system criterion, except that it need not specifically provide for each element of paragraphs (a)(1)(i)(E) and (F) of this section.

(2)(i) A self-sustaining drunk driving prevention program under which the fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided through the State's ordinary appropriations process, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

(ii) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, a State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for a self-sustaining drunk driving prevention program, and for fines or surcharges to be imposed on individuals convicted of operating a motor vehicle while under the influence of alcohol. The State shall describe its criteria and procedures for reviewing community programs to determine whether they are comprehensive, as defined in § 1313.3(b), and describe its procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs. The State shall submit data showing the aggregate amount of fines or surcharges actually collected and the aggregate amount of revenues actually returned or provided to community drunk driving prevention programs under the State's self-sustaining system. The State shall certify that these revenues are being used to continue the operation of comprehensive drunk driving prevention programs and that a significant portion of the costs of these programs are supported with non-Federal funds. If the State is demonstrating compliance based on the equivalent amount of non-Federal funds it provides to communities, it must also identify the source of these funds.

(iii) For the purpose of this section, activities conducted by the State for the benefit of a community may be considered to have been returned or provided to that community, provided that the community benefitted has had an active voice in the initiation, development, and implementation of the activities for which such funds are expended. In no case may the State arbitrarily ascribe State agency expenditures as "benefitting local communities." Where communities have had an active voice in the initiation, development, and implementation of a particular activity, and a community which has not had such active voice agrees in advance of implementation to accept the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Where no communities have had an active voice in the initiation, development, and implementation of a particular activity, but a political subdivision requests the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Evidence of consent and acceptance of the work, goods or services on behalf of the community must be established and maintained on file by the State, until all basic grant funds for that fiscal year have been expended and audits completed.

(b) To qualify for a basic incentive grant of 20 percent of its 23 U.S.C. 402 apportionment of fiscal year 1989, a State must meet the requirements of paragraphs (a)(1)(i) (A)-(E) and (a)(2)(i) of this section and require that the administrative review referred to under paragraph (a)(1)(i)(C) of this section shall take place and the suspension and revocation referred to under paragraph (a)(1)(i)(E) of this section take effect not later than 30 days after the individual first received notice of the administrative review and suspension or revocation, but only if the agency determines that the requirements of paragraph (a)(1)(i)(F) of this section would impose a hardship upon the State.

(1)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (a)(2)(ii) of this section, a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulator, which provides for each element of the 30-day expedited suspension system requirement. The State shall also explain the hardship that would be imposed by a 15-day administrative

review and suspension requirement and submit a plan demonstrating how it intends to meet the 15-day period identified in paragraph (a)(1)(i)(F) of this section.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (b)(1)(i) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (b) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1313.3(i), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages. Data submitted to demonstrate compliance with the promptness requirement in paragraph (b) of this section shall be part of the required showing of substantial progress toward implementing the plan identified in paragraph (b)(1)(i) of this section. The State shall also explain the hardship that would be imposed by a 15-day administrative review and suspension requirement.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 30-day expedited suspension system criterion.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Data State shall submit, in addition to the information identified in paragraph (a)(2)(ii) of this section, a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 30-day expedited suspension system requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the

average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (b) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. The State shall also explain the hardship that would be imposed by a 15-day administrative review and suspension requirement and submit a plan demonstrating how it intends to meet the 15-day period identified in paragraph (a)(1)(i)(F) of this section.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Data State shall submit all of the information identified in paragraph (b)(2)(i) of this section. In addition, the data submitted to demonstrate compliance with the promptness requirement in paragraph (b) of this section shall be part of the required showing of substantial progress toward implementing the plan identified in paragraph (b)(2)(i) of this section.

(iii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 30-day expedited suspension system criterion, except that it need not specifically provide for each element of paragraph (a)(1)(i)(E) of this section or the promptness requirement in paragraph (b) of this section.

§ 1313.6 Requirements for supplemental grants.

(a) *Mandatory blood alcohol concentration testing program.* To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and

(1) Provide for mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a crash resulting in the loss of human life or serious bodily injury has committed an alcohol-related traffic offense.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a supplemental grant under this paragraph, a Law State shall submit a

copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory testing requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Law State shall submit, in addition to the information in paragraph (a)(2)(i) of this section, data showing the number of drivers involved in these crashes and that, when there was probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, including the requirement that testing is mandatory.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the blood alcohol concentration testing requirement. The State shall also submit data showing the number of drivers involved in these crashes and that, when there was probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, except that testing may be permitted rather than required by law.

(b) *Program for prevention of operators under 21 from obtaining alcoholic beverages.* To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and

(1) Provide for an effective system for preventing operators of motor vehicles

under age 21 from obtaining alcoholic beverages, which includes the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals 21 years of age and older. The State must also make it unlawful both for a person who is less than 21 years of age to purchase and publicly possess any alcoholic beverage and for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age; provide for meaningful penalties for both the underaged person and the provider of the alcoholic beverage; and maintain an effective and highly visible enforcement program. In addition, the State must have or plans to put in place a Statewide training program for servers, vendors and its law enforcement community, and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages.

(2) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit a law, regulation, or binding policy directive implementing or interpreting an existing law which makes it unlawful both for a person who is less than 21 years of age to purchase and publicly possess any alcoholic beverage and for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age, and which provides for meaningful penalties for both underaged individuals and providers of alcoholic beverages. The State must also submit sample driver's licenses issued to persons both under and over 21 years of age. In addition, the State shall submit data demonstrating that the enforcement program is effective and highly visible, and that the State has or plans to put in place a Statewide training program for servers, vendors and its law enforcement community, and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages. Specific progress toward preventing operators of motor vehicles under 21 from obtaining alcoholic beverages must be shown in subsequent years.

(c) *Program making unlawful open containers and consumption of alcohol in motor vehicles.* (1) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program

which meets the requirements of § 1313.5, and

(i) Make unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of public highway except:

(A) As allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(B) As otherwise specifically allowed by such State, with the approval of NHTSA, but in no event may the driver of such motor vehicle be allowed to possess or consume and alcoholic beverage in the passenger area.

(ii) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit a law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of the unlawful open container and consumption of alcohol requirement. The State shall also identify and provide sufficient justification for the agency to approve any exception, other than the exception that is specifically permitted under paragraph (c)(1)(i)(A) of this section.

(2)(i) To qualify for a supplemental grant of 25 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must meet the requirements of paragraph (c)(1)(i) of this section, and have an effective and highly visible enforcement program which provides for meaningful penalties for violations.

(ii) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, in addition to submitting the information identified in paragraph (c)(1)(ii) of this section, a State shall show that its law provides for meaningful penalties and submit data demonstrating that the State enforcement program is effective and highly visible. Specific progress toward deterring the unlawful possession of open containers and the consumption of alcoholic beverages in motor vehicles must be shown in subsequent years.

(d) *Suspension of registration and return of license plate program.* To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving

prevention program which meets the requirements of § 1313.5, and

(1) Provide for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who:

(i) Has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period following November 18, 1988; or

(ii) Has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for an alcohol-related traffic offense; except that

(iii) A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender, who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which license plates may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

(2)(i) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the registration suspension and license plate return requirement.

(ii) To demonstrate compliance in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit, in addition to the information identified in paragraph (d)(2)(i) of this section, data showing the number of registrations suspended and license plates returned under the State law, that the average length of the term for which the registration was suspended and the license plates returned meets the definition in § 1313.3(j), and the number, reasons for and conditions under which hardship exemptions are being granted. The State must show that it is actively enforcing its law and that the hardship exceptions do not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle. The State can

provide the necessary data based on a representative sample.

§ 1313.7 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 410 shall be made to eligible States upon submission of the drunk driving prevention plan and certification required by § 1313.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

Issued on: June 19, 1989.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 89-14874 Filed 6-20-89; 3:30 pm]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 286

RIN 1076-AA55

Indian Business Development Program

RIN 1076-AA55

August 10, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Indian Financing Act Amendments of 1984 amended sections 402(a), 403, and 501 of the Indian Financing Act of 1974 by increasing the grant amounts for Indian tribes and Indian individuals, by authorizing appropriations not to exceed \$10,000,000 per year fiscal year 1986 and each fiscal year thereafter, and by providing that competent management and technical assistance is available prior to the making of a grant. These grants are for the purpose of assisting Indian reservation economic development.

Accordingly, 25 CFR Part 286 is proposed to be amended to implement the Indian Financing Act Amendments of 1984, and the original Act, which has been without authority for appropriations since fiscal year 1979.

DATES: Comments must be received on or before July 26, 1989.

ADDRESSES: Send written comments to the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development), Attention: Division of Financial Assistance, Room 4062 MIB, Bureau of Indian Affairs, Department of

the Interior, 18th & C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Richard K. Nephew, Division of Financial Assistance, Bureau of Indian Affairs, Telephone number (202) 343-3660.

SUPPLEMENTARY INFORMATION: These proposed amendments are published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the Addresses section of this preamble.

The proposed amendments reactivate a business development grant program which has been without funds since fiscal year 1977. The proposed rule increases the amount which may be awarded as a grant from \$50,000 to \$100,000 in the case of an individual Indian and \$250,000 in the case of an Indian tribe. A change is also being made in management and technical assistance so that such assistance may be given prior to the making of a grant. Certain technical changes are made for the purpose of clarification.

The Indian Business Development Program, regulated by Part 286 supplants the Special Grants for Economic Development Program which operated in fiscal years 1983, 1984, and 1985 under authority of the Snyder Act of 1921 (25 U.S.C. 13). The Department of the Interior has determined that this document is not a major action under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

It is estimated the program regulated by this Part will have no more than a \$50 million gross annual effect on the national economy. It is then, by definition at 318 DM 5, not a major action. Since this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, no environmental assessments were made.

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th & C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The primary author of this document is Richard K. Nephew, Division of Financial Assistance, Bureau of Indian Affairs, Telephone number (202) 343-3660.

List of Subjects in 25 CFR Part 286

Grant programs—business, Grant programs—Indians, Indians—business and finance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 286 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 286—[AMENDED]

1. The authority citation for Part 286 is revised to read as follows:

Authority: 25 U.S.C. 1524.

2. Section 286.1 is revised to read as follows:

§ 286.1 Definitions.

As used in this Part 286:

"Area Director" means the Bureau official in charge of an area office or his authorized representative.

"Commissioner" means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of day-to-day operations of the Bureau of Indian Affairs.

"Cooperative Association" means an association of individuals organized pursuant to state, federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization. "Corporation" means an entity organized pursuant to state, federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

"Economic enterprise" means any Indian-owned, commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 per centum of the enterprise.

"Grantee(s)" means the recipient(s) of a nonreimbursable grant under this part.

"Indian" means a person who is a member of an Indian tribe.

"Partnership" means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain.

"Profits" means the net income earned after deducting operating expenses from operating revenues.

"Reservation" means Indian reservations, unincorporated California rancherias, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

"Secretary" means the Secretary of the Interior.

"Superintendent" means the Bureau official in charge of a Bureau agency office or other local office reporting to an Area Director.

"Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized by the United States Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

3. A new § 286.5 is added to read as follows:

§ 286.5 Information collection.

(a) The collections of information contained in §§ 286.12 and 286.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0093. The information will be used to rate applicants in accordance with the priority criteria listed at 25 CFR 286.8. Response to this request is required to obtain a benefit in accordance with 25 U.S.C. 1521.

(b) Public reporting for this information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th & C Streets, NW., Washington, DC 20240; and the Paperwork Reduction Project (1076-0093), Office of Management and Budget, Washington, DC 20503.

4. Section 286.11(a) is revised to read as follows:

§ 286.11 Management and technical assistance.

(a) Prior to and concurrent with the making of a grant to finance an Indian economic enterprise, the Assistant Secretary—Indian Affairs will insure that competent management and technical assistance is available to the grantee in the preparation of the application for a grant and/or administration of the funds granted, consistent with the grantee's knowledge and experience and the nature and complexity of the economic enterprise being financed.

* * * * *

5. In § 286.17, paragraphs (a), (c), and (g) are revised and paragraph (j) is added, to read as follows:

§ 286.17 Grant limitations and requirements.

(a) Grants will be made to assist in establishing new economic enterprises, or in purchasing or expanding established ones. However, a grant may be made only when in the opinion of the Commissioner the applicant is unable to obtain adequate financing from other sources. Prior to making any grant, the Commissioner shall assure that, to the extent practical, the applicant's own resources have been invested in the proposed project. If the information in an application indicates that it may be possible for the applicant to obtain financing without a grant, the Commissioner will require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar purposes, showing whether or not they will make a loan to the applicant for the total financing needed without a grant.

* * * * *

(c) No grant in excess of \$250,000 may be made to an Indian tribe or in excess of \$100,000 to an Indian individual, partnership, corporation, or cooperative association.

* * * * *

(g) Ordinarily, not more than one grant will be made for a project. Nevertheless, in certain circumstances a second grant may be made to applicant for a new project or expansion of the original project. An additional grant will not be approved for an economic enterprise previously funded under the provisions of Title IV of the Indian Financing Act of 1974 except for expanding a successful enterprise, provided the total of grant made shall not exceed \$250,000 to an Indian tribe and \$100,000 to an Indian individual, partnership, corporation, or cooperative association.

(j) A grantee will be required to return all or a portion of the grant if the business or enterprise for which the grant was utilized is sold within three years of the date on which the grant was disbursed to the grantee, unless the proceeds from the sale are invested in a new business or business expansion which will benefit the Indian reservation economy. The grantee shall refund the lesser of the grant amount or a pro rata portion of sales proceeds. The pro rata portion of sales proceeds shall be based on the ratio of the grant amount to total costs funded by the grant and its corresponding matching financing.

W. P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-14969 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6959]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency
Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or

pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alaska	Municipality of Anchorage, Anchorage Borough.	Campbell	Approximately 600 feet downstream of West Dimond Boulevard.	*20	20
			Just downstream of West Dimond Boulevard	*24	*21
			Approximately 80 feet upstream of West Dimond Boulevard.	*25	*22
			Approximately 1,900 feet upstream of West Dimond Boulevard.	*26	*26
			Approximately 500 feet downstream of C Street.	*56	*56

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just downstream of C Street.....	*59	*57
			Approximately 600 feet upstream of C Street.....	*62	*62
			Approximately 200 feet downstream of Old Seward Highway.....	*105	*105
			Approximately 200 feet upstream of Old Seward Highway.....	*107	*106
			Just upstream of International Airport Road.....	*108	*108
			Approximately 300 feet upstream of New Seward Highway.....	*120	*120
		Chester Creek.....	Just downstream of C Street.....	*28	*28
			Approximately 100 feet upstream of A Street.....	*34	*35
			Just downstream of Seward Highway at the intersection of Gambell and Ingra Streets.....	*47	*47

Maps are available for review of The Public Works Department, 3500 East Tudor Road, Anchorage, Alaska.

Send comments to The Honorable Tom Fink, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, Alaska 99519.

Arizona.....	City of Casa Grande Pinal County.	North Branch, Santa Cruz Wash.	Approximately 600 feet upstream of Burris Road.....	None	*1361
			Approximately 500 feet downstream of Thornton Road.....	*1370	1368
			Approximately 450 feet upstream of Thornton Road.....	*1372	*1370
			Upstream side of Pinal Avenue.....	*1383	*1383
			At Trell Road.....	*1388	*1386
			Approximately 2,700 feet upstream of Trell Road.....	*1391	*1390

Maps are available for review at City Hall, 300 E. Fourth Street, Casa Grande, Arizona.

Send comments to The Honorable Jimmie B. Kerr, Mayor, City of Casa Grande, 300 E. Fourth Street, Casa Grande, Arizona 85222.

Arkansas.....	Mountain Home, City Baxter County.	Dodd Creek	Approximately 80 feet downstream of downstream corporate limits.....	*721	*721
			Approximately 750 feet upstream of Bucher Drive.....	*788	*786
		Dodd Creek Tributary	Approximately 1,800 feet downstream of Pine Tree Lane.....	None	*754

Maps available for inspection at the City Hall, 720 S. Hickory, Mountain Home, Arkansas.

Send comments to The Honorable James Stevens, Mayor of the City of Mountain Home, Baxter County, 720 S. Hickory, Mountain Home, Arkansas 72653.

California	Trinity County, unincorporated areas.	Weaver Creek	1,300 feet downstream of Mill Street	None	*1,993
			1,050 feet downstream of Mill Street	None	*1,937
			600 feet downstream of Mill Street.....	None	*1,945
			Just upstream of Mill Street.....	None	*1,960
		Middle Weaver Creek.....	Just upstream of Mill Street.....	None	*1,960
			850 feet upstream of Mill Street.....	None	*1,966
			1,700 feet upstream of Mill Street	None	*1,979
			Just downstream of Bremer Street.....	None	*1,991
			Just upstream of confluence with Ten Cent Gulch.....	None	*2,005
		Ten Cent Gulch.....	Just upstream of Highway 299.....	None	*2,011
	None.....	*2,011.....	Just upstream of Highway 3	None	*2,027
			850 feet upstream of Highway 3 at a private crossing.....	None	*2,040
			1,212 feet upstream of Highway 3 at a private crossing.....	None	*2,047
			2,200 feet upstream of Highway 3.....	None	*2,072

Maps are available for review at the Trinity County Courthouse, Board of Supervisors' Office, 101 Court Street, Weaverville, California.

Send comments to The Honorable Stanley Plowman, Chairman, Trinity County Board of Supervisors, P.O. Box 1258, Weaverville, California 96093.

Colorado.....	City of Colorado Springs, El Paso County.	Sand Creek, East Fork.....	At Powers Boulevard	*6,119	*6,119
			Approximately 870 feet upstream of Powers Boulevard.....	*6,128	*6,128
			Approximately 1,975 feet upstream of Powers Boulevard.....	*6,152	*6,156
			Approximately 2,850 feet upstream of Powers Boulevard.....	*6,169	*6,169

Maps are available for review at 101 West Costilla, Colorado Springs, Colorado.

Send comments to The Honorable Robert Isaac, Mayor, City of Colorado Springs, 30 South Nevada, Colorado Springs, Colorado 80901.

Florida.....	Unincorporated areas of Seminole County.	St. Johns River.....	About 2,000 feet downstream of Osteen Bridge..	*9	*9
			At Orange County boundary	*13	*11

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Econlockhatchee River	At confluence with St. Johns River.....	*12	*11
			At Orange County boundary	*37	*35
		Little Econlockhatchee River	At confluence with Econlockhatchee River	*33	*32
			At Orange County boundary	*48	*42
Maps available for inspection at the Planning Department, 1101 East First Street, Sanford, Florida.					
Send comments to The Honorable Ken Hooper, County Administrator, Seminole County, 1101 East First Street, Sanford, Florida 32771.					
Illinois.....	Unincorporated Areas of Fulton County.	Spoon River.....	Just downstream of State Route 116.....	*532	*536
			Just upstream of Second Street.....	*537	*537
		Tributary to Swegle Creek.....	About .48 miles downstream of State Route 116.	None	*536
			About .78 miles upstream of State Route 116.....	*536	*536
Maps available for inspection at the Zoning Office, 700 East Oak Street, Room 302, Canton, Illinois.					
Send comments to The Honorable Melba Ripper, Chairman, Board of County Commissioners, Fulton County, County Courthouse, Lewiston, Illinois 61542.					
Iowa	City of Carroll, Carroll County.	Middle, Racoon River.....	About 2550 feet downstream of Grant Road	None	*1222
			About 1000 feet upstream of Chicago and North Western Railroad.	None	*1242
Maps Available for inspection at the City Hall, 112 East 5th Street, Carroll, Iowa.					
Send comments to The Honorable H.J. Kienapfel, Mayor, City of Carroll, City Hall, 112 East 5th Street, Carroll, Iowa 51401.					
Kansas.....	City of Newton, Harvey County.	South Branch, Slate Creek.....	About 250 feet downstream of South Kansas Street.	*1434	*1434
			Just upstream of South Kansas Street	*1442	*1437
			Just downstream of Union Pacific Railroad.....	*1445	*1445
		County Club, Branch Slate Creek.	About 400 feet upstream of confluence with South Branch Slate Creek.	*1444	*1440
			Just upstream of earth dam.....	*1451	*1451
Maps available for inspection at the City Hall, Newton City Engineer's Office, 120 East 7th Street, Newton, Kansas.					
Send comments to The Honorable Violet Tompkins, Mayor, City of Newton, City Hall, 120 East 7th Street, Newton, Kansas 67114.					
Kentucky.....	City of Allen City, Floyd County.	Levisa Fork.....	Just upstream of State Highway 23.....	*650	*651
			About 1200 feet upstream of State Highway 80..	*651	*652
		Beaver Creek	Within community	*650	*651
Maps available for inspection at the City Hall, P.O. Box 510, Main Street, Allen City, Kentucky.					
Send comments to The Honorable Vernon Porter, Mayor, Pro-Tem, City of Allen City, City Hall, P.O. Box 510, Main Street, Allen City, Kentucky 41601.					
Maine	Cherryfield, town, Washington County.	Narraguagus River.....	Approximately 1.5 miles upstream of confluence of West Branch Narraguagus River.	None	*68
			Upstream of corporate limits.....	None	*96
		West Branch Narraguagus River.	At confluence with Narraguagus River.....	None	*67
			Upstream corporate limits	None	*89
Maps available for inspection at the Town Hall, Main Street, Cherryfield, Maine.					
Send comments to The Honorable James Layton, Manager for the Town of Cherryfield, Washington County, RFD 1, Box 3, Cherryfield, Maine 04622.					
Missouri	City of Manchester, St. Louis County.	Fishpot Creak.....	About 1470 feet downstream of Lindy Drive.....	*524	*525
			About 850 feet downstream of Lindy Drive.....	*538	*530
			Just upstream of Lindy Drive.....	*535	*533
Maps available for inspection at the City Hall, Engineering Department, 14318 Manchester Road, Manchester, Missouri.					
Send comments to The Honorable Frank McGuire, Mayor, City of Manchester, City Hall, 14318 Manchester Road, Manchester, Missouri 63011.					
New Jersey	East Brunswick, township, Middlesex County.	Cedar Brook	Approximately .4 mile downstream of the corporate limits.	*34	*32
			Approximately .4 mile upstream of the corporate limits.	None	*35
Maps available for inspection at the Department of Planning and Community Development, 1 Jean Walling Civic Center, East Brunswick, New Jersey.					
Send comments to The Honorable Gregory Fehrenbach, Administrator of the Township of East Brunswick, Middlesex County, P.O. Box 218, East Brunswick, New Jersey 08816.					
Pennsylvania.....	Earl, township, Berks County.	Manatawny Creek.....	Approximately 100 feet upstream of downstream corporate limits.	*248	*249
			Approximately 640 feet upstream of upstream corporate limits.	None	*273

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Township Building, Earl, Pennsylvania. Send comments to The Honorable Leroy Heimbach, Chairman of the Township of Earl Board of Supervisors, Berks County, R.D. 3, Box 571, Boyerstown, Pennsylvania 19512.					
Pennsylvania	Falls, township, Bucks County.	Delaware River	At downstream corporate limits	*11	*12
			At upstream corporate limits	*16	*20
Maps available for inspection at the Falls Township Building, 285 Yardley Avenue, Falls, Pennsylvania. Send comments to The Honorable August Bauers, Manager of the Township of Falls, Bucks County, 285 Yardley Avenue, Falls, Pennsylvania 19054.					
Pennsylvania	Miller, township, Huntingdon County.	Standing Stone Creek	At downstream corporate limits	None	*662
			Approximately .43 mile upstream of LR 31112	*688	*687
Maps available for inspection at the home of the Township Secretary, Patricia McNeal, R.D. 2, Huntingdon, Pennsylvania. Send comments to The Honorable James Bookhamer, Jr., Chairman of the Township of Miller Board of Supervisors, Huntingdon County, R.D. 2, Huntingdon, Pennsylvania 16652					
Pennsylvania	Mount Pleasant, township, Columbia County.	Little Fishing Creek	Approximately 50 feet upstream of Township Route 518.	*549	*547
			At upstream corporate limits	*582	*580
Maps available for inspection at the residence of the Township Secretary, Mr. Boyd C. Laycock, Jr., R.D. 4, Bloomsburg, Pennsylvania. Send comments to The Honorable Jon E. Turner, Chairman of the Township of Mount Pleasant Board of Supervisors, Columbia County, R.D. 4, Bloomsburg, Pennsylvania 17815.					
Pennsylvania	Ruscombmanor, township, Berks County.	Unnamed Tributary to Little Manatawny Creek.	At downstream corporate limits	*483	*484
			Approximately 0.3 mile upstream of Olney Road.	*524	*525
Maps available for inspection at the residence of the township secretary, Rose Ellen Mull, R.D. 3, Oley Road, Fleetwood, Pennsylvania. Send comments to The Honorable Earl L. Matthias, Chairman of the Township of Ruscombmanor Board of Supervisors, Berks County, R.D. 5, Box 5467, Fleetwood, Pennsylvania 19522.					
Pennsylvania	Temple, borough, Berks County.	Laurel Run	Approximately 1,250 feet upstream of the corporate limits.	*340	*339
			At upstream corporate limits	*393	*390
		Laurel Run Alternate Branch	At confluence with Laurel Run	*346	*342
			At divergence from Laurel Run	*372	*376
Maps available for inspection at the residence of Carl B. Geibel, Secretary/Treasurer, 4835 Kutztown Road, Temple, Pennsylvania. Send comments to The Honorable Richard E. Kubeck, Mayor of the Borough of Temple, Berks County, 802 Euclid Avenue, Temple, Pennsylvania 19560.					
South Carolina	Unincorporated Areas of Richland County.	Tributary LJ-1	About 500 feet downstream of Liongate Road	*286	286
			Just downstream of Spring Valley Road	*304	*299
			Just upstream of Spring Valley Road	*307	*307
Maps available for inspection at the Richland County Engineering Office, Columbia, South Carolina. Send comments to The Honorable Dean Hunter, Jr., Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.					
Tennessee	City of Collegedale, Hamilton County.	Wolftever Creek	About 0.6 mile downstream of Ooltewah-Ringgold Road.	None	*760
			Just upstream of Tucker Road	*785	*791
			About 1.82 miles upstream of Tallant Road	*804	*805
		Wilkerson Branch	At mouth	*785	*791
			Just upstream of College Drive East	*808	*807
			About 1,370 feet upstream of College Drive East.	None	*819
		Chesnutt Creek	At mouth	*792	*793
Just upstream of Norfolk Southern Railway	*797	*797			
Maps available for inspection at the City Hall, P.O. Box 1880, Collegedale, Tennessee. Send comments to The Honorable Wayne VandeVere, Mayor, City of Collegedale, P.O. Box 1880, Collegedale, Tennessee 37315.					
Tennessee	City of Knoxville, Knox County.	Love Creek	Just downstream of Millertown Pike	*948	*948
			About 1,500 feet upstream of Millertown Pike	*957	*956
			Just upstream of Shalite Mine Road	*964	*964
Maps available for inspection at the Knoxville Department of Engineering, P.O. Box 1631, Knoxville, Tennessee. Send comments to The Honorable Victor Ashe, Mayor, City of Knoxville, P.O. 1631, Knoxville, Tennessee 37901.					
Texas	Fort Bend County, unincorporated areas.	Clodine Ditch	At upstream side of the corporate limits	*93	*91
			Approximately 3.15 miles upstream of Harlem Road.	None	*94

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Fort Bend County Courthouse, 401 Jackson, Richmond, Texas. Send comments to The Honorable Jodie E. Stavinocha, Fort Bend County Judge P.O. Box 368, Richmond, Texas 77469.					
Texas	Victoria County, unincorporated areas.	Whispering Creek.....	Approximately 450 feet downstream of the City of Victoria corporate limits. Approximately 0.70 mile upstream of the City of Victoria corporate limits.	*113 *119	*112 *118
Maps available for inspection at the Old Courthouse, Room 102, 101 N. Bridge, Victoria, Texas. Send comments to The Honorable J.F. Barnett, Victoria County Floodplain Administrator, Old Courthouse, Room 102, 101 N. Bridge, Victoria, Texas 77901.					
Texas	Victoria, city, Victoria County.	Whispering Creek.....	At upstream side of U.S. Route 77	*98	*97
			Approximately 1,500 feet upstream of corporate limits.	*117	*116
		Spring Creek.....	At confluence of North Outfall.....	*80	*79
			Approximately 700 feet downstream of State Route 463.	*83	*84
		North Outfall.....	At confluence with Spring Creek.....	*80	*79
Maps available for inspection at the City Hall, 105 West Juan Linn, Victoria, Texas. Send comments to The Honorable John Blackaller, Mayor of the City of Victoria, Victoria County, P.O. Box 1758, Victoria, Texas 77902.					
Washington	City of Kennewick, Benton County.	Zintel Canyon.....	At the intersection of West 7th Avenue and South Vancouver Street. At the intersection of West 7th Avenue and Tacoma Street. At the intersection of South Lone Street and South Hartford Street. At the intersection of South Everett Street and West 11th Avenue. Approximately 100 feet north of the intersection of West 19th Avenue and Washington Street. Approximately 400 feet northeast of the intersection of West 21st Avenue and Washington Street.	*442 *432 *391 *391 *378 *372	*442 *435 *394 *390 *376 *372
Maps are available for review at City Hall, 210 West 6th Avenue, Kennewick, Washington. Send comments to The Honorable Victor P. Epperly, Mayor, City of Kennewick, 210 West 6th Avenue, Kennewick, Washington 99336.					
Washington	Grays Harbor County, unincorporated areas.	Pacific Ocean at Copalis Beach.	Approximately 2,000 feet north of mouth of Connor Creek at Chabot Island. Pacific shoreline 1,000 feet west of Chabot Island. Approximately 1,000 feet west of intersection of State Highway 109 and Pacific Boulevard.	*21 *21 *21	*15 *18 #2

Maps are available for review at Grays Harbor County Planning Department, 100 West Broadway Street, Montesano, Washington.

Send comments to The Honorable William F. Bogler, Chairman, Grays Harbor County Board of Commissioners, 100 West Broadway Street, Montesano, Washington 98563

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

Issued: June 12, 1989.

[FR Doc. 89-15012 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 528, 552 and 553

[GSAR Notice No. 5-244]

General Services Administration Acquisition Regulation; Bonds

AGENCY: Office of Acquisition Policy,
GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise

section 528.101-4 to clarify the procedure for dealing with noncompliance with bid guarantee requirements in negotiated acquisitions; revise section 528.103-2 to delete percentage parameters for establishing the penal amount of performance bond from paragraph (c) and thereby permit the contracting officer to establish the penal amount on a case-by-case basis and to amend paragraph (d) to modify the prescriptive language for use of the clause at 552.228-72, Performance Bond, to reflect the need to modify the clause when it is used in solicitations that do not contain options to extend the period of performance; revise section 528.103-3

to delete percentage parameters for establishing the penal amount of payment bonds from paragraph (b) and thereby permit the contracting officer to establish the penal amount of payment bonds on a case-by-case basis and to amend paragraph (c) to modify the prescriptive language for use of the clause at 552.228-73, Performance and Payment Bonds, to reflect the need to modify the clause when it is used in solicitations that do not contain option provisions; to add section 528.106-1 to provide for use of the GSA Form 3604, Performance Bond for Other Than Construction Contracts, instead of the Standard Form 25, when a performance bond is required for building service and other service contracts; to revise the clauses in sections 552.228-72 and 552.228-73 to provide for the submission of performance or performance and payment bonds for the initial period of performance only after the contract is awarded, and to provide for the submission of an additional performance or performance and payment bond before an option to extend the period of performance is exercised by the Government; and to add section 553.370-3604 to illustrate the GSA Form 3604, Performance Bond for Other Than Construction Contracts. This rule is being initiated to resolve problems being experienced by GSA contracting activities. Since the problems being experienced by GSA may also apply to other agencies, a recommendation is also being made that the issues be addressed in the Federal Acquisition Regulation (FAR).

DATE: Comments are due in writing on or before July 26, 1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW, Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations, (202) 566-1224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

B. Regulatory Flexibility Act

The proposed rule may have an economic effect on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis has been prepared and submitted to the Chief

Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available for public comment from the office identified above. The initial regulatory flexibility analysis indicates that when bonds (bid, performance and/or payment) are required in service contracts which contain provisions to extend the period of performance, contractors, particularly small and small disadvantaged business concerns, have great difficulty in obtaining such bonds. Many surety bond underwriters, simply refuse to issue bonds for such contracts. Others have modified the standard forms used for bonds and limited their liability to the first year of performance. Such modification may result in rejection of an otherwise acceptable bid when the sealed bidding method of procurement is used. The current regulatory requirements when applied to such service contracts adversely effect competition. GSA does not maintain statistics on the number of service contracts that require bonds. However, GSA believes the proposed rule will have a beneficial impact in that it will enable more contractors, particularly small and small disadvantaged business concerns, to compete for such contracts.

C. Paperwork Reduction Act

The proposed rule does contain information collection requirements which have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The title of the collections are 48 CFR 552.228-72, Performance Bond, and 48 CFR 552.228-73, Performance and Payment Bonds. The clauses require the offeror awarded the contract to submit bonds. In accordance with 41 CFR 201-45.510, GSA has requested an exception to permit the agency to use the proposed GSA Form 3604, Performance Bond for Other Than Construction Contracts, for service contracts in lieu of the Standard Form 25, Performance Bond. The GSA form does not request any information beyond that required by the standard form. The estimated annual burden for this collection is 275 hours. This is based on an estimated average burden hour per response of 0.25, 1 response per respondent, and an estimated 1100 respondents per year. Comments on the information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 528, 552 and 553

Government procurement.

It is proposed that 48 CFR Parts 528, 552 and 553 be amended as follows:

1. The authority citation for 48 CFR Parts 528, 552 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 528—BONDS AND INSURANCE

2. Section 528.101-4 is revised to read as follows:

528.101-4 Noncompliance with bid guarantee requirements.

(a) In sealed bidding, noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the situations described in FAR 28.101-4 when the noncompliance must be waived.

(b) In negotiation, noncompliance with a solicitation requirement for a bid guarantee requires rejection of an initial proposal as unacceptable, if a determination is made to award the contract on initial proposals without discussion, except in the situations described in FAR 28.101-4 when the noncompliance must be waived. (See FAR 15.610(a) for conditions regarding making awards based on initial proposals.) If the conditions for awarding based on initial proposals are not met, deficiencies in bid guarantees submitted by offerors determined to be in the competitive range must be addressed during discussions and the offeror must be given an opportunity to correct the deficiency.

3. Section 528.103-2 is amended by revising paragraphs (c) and (d) to read as follows:

528.103-2 Performance bonds.

* * * * *

(c) The contracting officer shall consider the circumstances and determine the penal amount of the performance bond on a case-by-case basis.

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.228-72, Performance Bond, in solicitations and contracts when a building service or other service contract that includes options to extend the period of performance is contemplated and a performance bond requirement is to be included. The clause should be appropriately modified to delete references to the base term and options to extend the period of performance when the solicitation does not include option provisions.

4. Section 528.103-3 is amended by revising paragraphs (b) and (c) to read as follows:

528.103-3 Payment bonds.

(b) The contracting officer shall consider the circumstances and determine the penal amount of the payment bond on a case-by-case basis.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.228-73, Performance and Payment Bonds, in solicitations and contracts when a building service or other service contract that includes options to extend the period of performance is contemplated and a performance and payment bond requirement is to be included. The clause should be appropriately modified to delete references to the base term and option to extend the period of performance when the contract does not include option provisions.

5. Section 528.106-1 is added to read as follows:

528.106-1 Bonds and bond related forms.

The GSA Form 3604, Performance Bond for Other Than Construction Contracts, must be used instead of the Standard Form 25, Performance Bond, when a performance bond is required for building service or other service contracts.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Sections 552.228-72 and 552.228-73 are revised to read as follows:

552.228-72 Performance bond.

As prescribed in 528.103-2(d), insert a clause substantially as follows:

Performance Bond (XXX 1989)

(a) The Offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to _____ percent of the contract price for the base term of the contract. In

determining the bond amount, "base term of the contract" refers to the initial period of performance EXCLUDING ANY OPTION(S). The guaranty shall cover the base term of the contract and any extensions thereof excluding any option(s) to extend the term of the contract.

(b) Prior to exercise of any option that extends the term of the contract, the Contractor shall be required to furnish an additional performance bond in an amount equal to _____ percent of the contract price for each option term exercised by the Government. In determining the bond amount, "option term" refers to the period of performance for the option being exercised. The guaranty for each option exercised shall cover the option term and any extensions thereof.

(c) The bond shall be provided within 15 calendar days after receiving written notice of award (or acceptance of offer) for the base term of the contract or written notification of the exercised option. The period of time for furnishing the performance bond may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period. Failure to provide the required bond may be cause to terminate the Contractor's right to proceed under the base or option term of the contract.

(d) The performance bond shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in accordance with Treasury Department regulations, certain bonds or notes of the United States. (End of Clause)

552.228-73 Performance and payment bonds.

As prescribed in 528.103-3(c), insert a clause substantially as follows:

Performance and Payment Bonds (XXX 1989)

(a) The Offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to _____ percent of the contract price and a payment bond in an amount equal to _____ percent of the contract price for the base term of the contract. In determining the bond amount, "base term of the contract"

refers to the initial period of performance EXCLUDING ANY OPTION(S). The guaranty shall cover the base term of the contract and any extensions thereof excluding any option(s) to extend the term of the contract.

(b) Prior to exercise of any option that extends the term of the contract, the Contractor shall be required to furnish an additional performance bond in an amount equal to _____ percent of the contract price and a payment bond in an amount equal to _____ percent of the contract price for each option term exercised by the Government. In determining the bond amount, "option term" refers to the period of performance for the option being exercised. The guaranty for each option exercised shall cover the option term and any extensions thereof.

(c) The bonds shall be provided within 15 calendar days after receiving written notice of award (or acceptance of offer) for the base term of the contract or written notification of the exercised option. The period of time for furnishing the bonds may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period. Failure to provide the required bonds may be cause to terminate the Contractor's right to proceed under the base or option term of the contract.

(d) The performance and payment bonds shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in accordance with Treasury Department regulations, certain bonds or notes of the United States. (End of Clause)

7. Section 553.370-3604 is added to illustrate the GSA Form 3604, Performance Bond for Other Than Construction Contracts.

Note: GSA Form 3604 will not appear in the Code of Federal Regulations.

Dated: June 15, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

BILLING CODE 6820-61-M

**PERFORMANCE BOND FOR OTHER THAN
CONSTRUCTION CONTRACTS**
(See instructions on reverse)

DATE BOND EXECUTED (Must be same or later than date of contract)

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)

TYPE OF ORGANIZATION ("X" one)

☐ INDIVIDUAL ☐ PARTNERSHIP

☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) (Name(s) and business address(es))

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS

CONTRACT DATE

CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the base term or option term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options to extend the term of the contract. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)	1.	2.	Corporate Seal
	(Seal)	(Seal)	
NAME(S) & TITLE(S) (Type@)	1.	2.	Corporate Seal

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1.	2.
	(Seal)	(Seal)
NAME(S) (Type@)	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT	Corporate Seal
			\$	
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Type@)	1.	2.	

GENERAL SERVICES ADMINISTRATION

GSA FORM 3604 ()

CORPORATE SURETY(IES) (Continued)

		NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT	
SURETY B				\$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C				\$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D				\$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E				\$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F				\$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G				\$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

BOND PREMIUM	RATE PER THOUSAND	TOTAL
	\$	\$

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorization person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)"

on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, the completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice To Close Comment Periods on Petitions To List Mono Lake Brine Shrimp, Edgewood Blind Harvestman, and Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice to close public comment periods on listing petitions.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a decision to close the public comment periods on three listing petitions in order to close the record before findings can be made on respective petitions.

DATES: Comments on the petitions to list the Mono Lake brine shrimp, the Edgewood blind harvestman, and the western snowy plover must be submitted by July 11, 1989.

ADDRESSES: Information, comments, or questions on the brine shrimp and the harvestman should be submitted to the Acting Field Supervisor, Division of Endangered Species, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California 95825. Information, comments, or questions on the plover should be submitted to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 727 N.E. 24th Avenue, Portland, Oregon 97232. The petitions, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Harlow, at the above Sacramento address (telephone 916/978-4866 or FTS 460-4866); Mr. Russ Peterson, at the above Portland address (telephone 503/231-6179 or FTS 429-6179).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 et seq.), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal

Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service published 90-day findings on two petitions to list the Mono Lake brine shrimp and the Edgewood blind harvestman in the Federal Register on August 19, 1988 (53 FR 31721). The Service also published a 90-day finding in the Federal Register on November 14, 1988 (53 FR 45788) on a petition to list the western snowy plover. Each of these notices requested public comments on the status of the species. The notices did not, however, specify closing dates for receipt of public comments. Comments on the three petitions must be submitted by the dates indicated above.

Author

This notice was prepared by Miss Jackie Campbell, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6150 or FTS 429-6150).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-15004 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB14

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Rule To Reclassify the Gila Trout From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period is reopened on the

proposed rule to reclassify the Gila trout (*Salmo gila*) from endangered to threatened. The Service believes that the comment period should be reopened to obtain additional information on the reclassification.

DATE: The comment period on this proposed rule is reopened until July 26, 1989. Comments received after the closing date may not be considered in the final decision on this proposed rule.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3530 Pan American Highway NE, Suite D, Albuquerque, New Mexico 87107. Comments and materials will be available for public inspection during normal business hours, by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry Burton, at the above address (505/883-7877 or FTS 474-7877).

SUPPLEMENTARY INFORMATION:

Background

The Gila trout is native to relatively undisturbed, high altitude mountain streams in Arizona and New Mexico. The Service has determined that reclassification of the Gila trout to threatened status may be warranted. The five original populations in the Gila National Forest, New Mexico, have been restored, replicated, and biologically secured, and seven additional populations have been established within the historic range of this fish. These accomplishments fulfill criteria for reclassification as given in the Gila Trout Recovery Plan (1984).

A proposal to reclassify the Gila trout as threatened was published in the Federal Register (52 FR 37424) on October 6, 1987. The comment period on the proposal originally closed on December 7, 1987. The Service is reopening the comment period to obtain additional information on the status of the species. Written comments received by July 26, 1989, at the Service office in the Addresses section will be considered.

References Cited

U.S. Fish and Wildlife Service. 1984. Gila Trout Recovery Plan. Endangered Species Office. Albuquerque, New Mexico. 52 pp.

Author

The primary author of this notice is Sonja E. Jahrsdoerfer, Wildlife Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825), Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 7, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-15006 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17**Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The Service announces a 90-day finding on a petition to reclassify the African elephant from threatened to endangered, and initiates a status review of this species.

DATES: The finding announced herein was made on May 9, 1989. Comments and information may be submitted until September 25, 1989.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority, Mail Stop; Room 725, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240. The petition, finding, supporting data, and comments

will be available for public inspection, by appointment, from 8:00 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703-358-1708 or FTS 358-1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition presents substantial information indicating that the action may be warranted, and that such a finding be promptly published in the **Federal Register**. If the finding is positive, section 4(b)(3) also requires prompt commencement of a review of the status of the involved species. The Service now announces a 90-day finding on a recently received petition.

The petition was submitted jointly by the Humane Society of the United States, Animal Welfare Institute, International Wildlife coalition, Animal Protection Institute, Society for Animal Protective Legislation, and Friends of Animals, Inc. An additional 32 organizations were listed as supporting and joining in the petition. It is dated February 16, 1989, and was received by the Service on the same date. It requests that the classification of the African elephant (*Loxodonta africana*) on the List of Endangered and Threatened Wildlife be changed from threatened to endangered.

The petition, and other information available to the Service, indicates that the status of the African elephant has deteriorated substantially since the species was originally classified as threatened in 1978. There are several serious problems, but the most critical immediate factors in the situation are intensive poaching to obtain elephant

ivory and subsequent international trade of this product. In 1978 the species was estimated to number about 1,500,000 individuals. Regulatory measures implemented then and subsequently by the United States, other nations, and the convention on International Trade in Endangered Species of Wild Fauna and Flora have not been successful in arresting the decline. By 1987 the number of elephants had fallen to about 764,000, according to the African Elephant and Rhino Specialist Group of the International Union for conservation of Nature and Natural Resources. The most informed current estimates are between 550,000 and 700,000.

The Service has examined the petition and has found it to present substantial information indicating that the requested action may be warranted. Therefore, a review of the status of the African elephant is initiated herewith. The Service will consider the comments received, along with all other available data, in making a finding, required by section 4(b)(3) within 12 months of receipt of a petition presenting substantial information, as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825), Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 13, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-15005 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 54, No. 121

Monday, June 26, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PE-89-001]

Organization, Functions, and Delegations of Authority

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: This notice sets forth the organization, functions, and delegations of authority for the Agricultural Marketing Service (AMS).

FOR FURTHER INFORMATION CONTACT: Celia Neach, Agricultural Marketing Service, Room 1721-S, P.O. Box 96456, Washington, DC 20090-6456; telephone 202/447-4874, [FTS] 447-4874.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated to the Administrator of AMS in 7 CFR 2.7 and 2.50, the Organization, Functions, and Delegations of Authority of AMS published at 37 FR 8118, April 25, 1972, and amended by 39 FR 23076, June 26, 1974, and 40 FR 29559, July 14, 1975, is superseded by the following Statement of Organization, Functions, and Delegations of Authority of AMS. Advance public notice and opportunity for comment are unnecessary because this document relates to rules and regulations of agency organization, procedure, and practice, and do not affect any member of the public.

General

AMS was created by the Secretary of Agriculture on November 2, 1953, as authorized by 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 67 Stat. 633; and related authority. The name was changed to the Consumer and Marketing Service on February 8, 1965. Effective April 2, 1972, the Secretary changed the name back to Agricultural Marketing Service. The central office of AMS is located in Washington, DC, but a large part of the program activity is

carried on through various regional and field offices. The functions and authorities delegated to the Administrator, AMS, appear in 7 CFR 2.50.

Organization and Functions

The Administrator. The Administrator is responsible for the general direction and supervision of programs and activities assigned to AMS. The Administrator reports to the Assistant Secretary for Marketing and Inspection Services.

Deputy Administrator, Marketing Programs. The Deputy Administrator for Marketing Programs is responsible for participating with the Administrator in developing, administering, and coordinating activities relating to AMS marketing and regulatory programs; and directing and coordinating the administration of the marketing and regulatory programs including the standardization, inspection, grading, and classing of agricultural commodities, market news, the functions contained in the Agricultural Marketing Act of 1946, as amended, including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned; and the functions contained in the legislation identified under 7 CFR 2.50. The programs and activities are carried out by six commodity Divisions (Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, and Tobacco), and the Commodities Scientific Support Division.

Deputy Administrator, Management. The Deputy Administrator, Management is responsible for participating with the Administrator in developing, administering, and coordinating all activities relating to AMS management programs; directing and coordinating the administration of AMS Equal Employment Opportunity (EEO) and civil rights functions; and directing and coordinating the administration of the overall administrative management programs of AMS including budget and financial services, personnel, training, administrative, information resources management, and communication services. The programs and activities are carried out by the EEO Staff, the Financial Management, Personnel, and Information Resources Management

Divisions, and the Executive Services Staff.

Information Staff. The Information Staff is responsible for the overall planning and administration of all public information programs relating to the AMS marketing service program activities. The responsibilities include developing and coordinating information and public education activities addressing consumer, industry, media, congressional, AMS, and Departmental audiences.

Compliance Staff. The Compliance Staff is responsible for developing and implementing methods to ensure integrity, effectiveness, and public confidence in all AMS programs and coordinating the AMS Management Control Program; evaluating and improving methods of detecting, preventing, and taking corrective actions on violations of AMS administered statutes; conducting investigations of non-criminal violations of the statutes administered by AMS, investigating minor criminal violations, and conducting employee misconduct investigations as authorized by the Department's Office of Inspector General.

Legislative and Regulatory Review Staff. The Legislative and Regulatory Review Staff is responsible for formulating and coordinating AMS legislative affairs and regulatory review programs; serving as the principal advisor to the Administrator on legislative matters; and representing AMS in developing and maintaining relationships with congressional offices.

Marketing Programs

The Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, Tobacco, and Commodities Scientific Support Divisions are under administrative, functional, and technical direction of the Deputy Administrator for Marketing Programs.

Cotton Division. The Cotton Division is responsible for planning and administering marketing services (market news, standardization, grading, sampling, and testing), expansion of market outlets, marketing regulations, and related programs for cotton, cotton linters, cottonseed, cotton products, and other vegetable fibers and related commodities as authorized by appropriate legislation listed in 7 CFR 2.50.

Dairy Division. The Dairy Division is responsible for planning and administering milk marketing agreement and order programs under the Agricultural Marketing Agreement Act of 1937, as amended, including directing and coordinating the administration of the overall administrative management programs of the Milk Market Administrators and their staffs; market news and milk order market information; promotion and research programs under the Dairy and Tobacco Adjustment Act of 1983; voluntary grading and inspection of dairy products and dairy plants including development of standards as authorized by the Agricultural Marketing Act of 1946, as amended, and related programs for milk and dairy products as authorized by appropriate legislation listed in 7 CFR 2.50.

Fruit and Vegetable Division. The Fruit and Vegetable Division is responsible for planning and administering market news; market regulatory programs; diversion, purchase, export, and research and promotion programs; voluntary quality inspection programs on fresh and processed fruits and vegetables, edible nuts and miscellaneous assigned commodities; marketing agreements and order programs; and a food quality assurance program as authorized by appropriate legislation listed in 7 CFR 2.50.

Livestock and Seed Division. The Livestock and Seed Division is responsible for planning and directing the implementation and administration of marketing services and regulatory activities relating to commodity grading and certification for meat and livestock products; inspection and certification of quality of agricultural and vegetable seeds; development, revision, and interpretation of grade standards and specifications for livestock, meat, wool, and mohair; purchase of meat and meat products for Government programs; market news reporting for livestock, meat, wool, and grain products; self-help research and information programs for lamb, beef, pork, wool, and mohair; and regulation of the marketing of agricultural and vegetable seeds in interstate commerce as authorized by appropriate legislation listed in 7 CFR 2.50.

Poultry Division. The Poultry Division is responsible for planning and administering market news service on poultry, eggs, and related commodities; voluntary inspection and grading on poultry and poultry products, shell eggs, egg products, rabbits and related products; mandatory inspection in all

plants processing liquid, dried, or frozen egg products; development and revision of standards; purchase and diversion programs; and research and promotion activities as authorized by appropriate legislation listed in 7 CFR 2.50.

Tobacco Division. The Tobacco Division is responsible for planning and administering marketing services relating to market news, standardization, inspection, and grading, market regulatory programs, expansion of market outlets, and related programs for tobacco products and by-products, naval stores, and related commodities as authorized by legislation listed in 7 CFR 2.50.

Commodities Scientific Support Division. The Commodities Scientific Support Division is responsible for planning and formulating policies and programs for AMS scientific and marketing research activities; AMS statistical services; developing and implementing policies, programs, and central laboratory operations to provide scientific support to commodity programs; and carrying out laboratory quality assurance and safety oversight activities and related laboratory training.

Management Services

The Financial Management, Information Resources Management, and Personnel Divisions, the EEO Staff, and the Executive Services Staff are under the administrative, functional, and technical direction of the Deputy Administrator, Management.

Financial Management Division. The Financial Management Division is responsible for planning and administering budget and financial services; formulating and recommending integrated financial policies and programs including systems, instructions, procedures, and forms; provision of advice and assistance on reimbursable and cooperative agreements and other forms of Federal Assistance; and the operation of an Investment Program for AMS user fee reserve balances.

Personnel Division. The Personnel Division is responsible for formulating policy recommendations and developing comprehensive personnel employment programs; developing and administering AMS programs for the classification of positions, organizational development, and position management; employee and labor relations, employee development, and safety and health programs.

Information Resources Management Division. The Information Resources Management Division is responsible for administering AMS information

systems, both automated and manual by formulating, planning, and implementing systems to meet AMS changing needs and requirements in conjunction with the Administrator, Deputy Administrators, and Division Directors of AMS; formulating and preparing multi-year budgets and reports on AMS systems, projects, and system activities as required; providing AMS support in data processing, office automation, microcomputers, telecommunications, micrographics, computer graphics, system studies and evaluation.

Equal Employment Opportunity Staff. The EEO Staff is responsible for formulating recommendations for EEO and civil rights politics and procedures and providing guidance and technical assistance on EEO and civil rights concerns; developing implementation plans and monitoring and evaluating EEO and civil rights programs for effectiveness and progress; and administering the EEO Counselor/Mediation and Special Emphasis programs.

Executive Services Staff. The Executive Services Staff is responsible for providing administrative support services to management divisions; serving as liaison with the Animal and Plant Health Inspection Service in providing administrative support to AMS; and administering the Market News telecommunications network and the voice communication system for AMS.

Delegations of Authority

Deputy Administrators. The Deputy Administrator, Marketing Programs and the Deputy Administrator, Management, are delegated the authority to perform all the duties and to exercise all the functions and powers which are now, or which may be vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is reserved to the Administrator. Each Deputy Administrator shall be primarily responsible for the programs and activities of AMS assigned to him or her.

The Deputy Administrator, Marketing Programs, and the Deputy Administrator, Management, are delegated authority to establish and interpret program policies with respect to functions assigned.

Information Staff; Compliance Staff; Legislative and Regulatory Review Staff. The Directors of the Information, the Compliance, and the Legislative and Regulatory Review Staffs are delegated authority, in connection with respective functions assigned to him or her, to perform all duties and exercise all

functions and powers which are now, or which may be vested in the Administrator (including the power to redelegate except when prohibited) except such authority as is reserved to the Administrator.

Marketing Programs Divisions and Management Services Divisions and Staffs. The Directors of the Marketing Programs Divisions and the Management Services Divisions and Staffs are delegated authority, in connection with the respective functions assigned to each of them, to perform all the duties and to exercise all the functions and powers which are now, or which may be, vested in the Administrator (including the power of redelegate except when prohibited) except such authority as is reserved to the Administrator and the Deputy Administrators.

Concurrent Authority and Responsibility to the Administrator. No delegation or authorization prescribed shall preclude the Administrator, or each Deputy Administrator, from exercising any of the powers or functions or from performing any of the duties conferred upon them, and any such delegation or authorization is subject at all times to withdrawal or amendment by the Administrator, and in their respective fields, by each Deputy Administrator. The offices to whom authority is delegated shall:

Maintain close working relationships with officers to whom they report;

Keep superiors advised with respect to major problems and developments;

Discuss with superiors proposed actions involving major policy questions or other important considerations or questions including matters involving relationships with other Federal agencies, other agencies of the Department, other Divisions or offices of AMS, other governmental or private organizations or groups.

Prior Authorization and Delegations

All prior delegations and redelegations of authority relating to any function, program, or activity covered by this notice shall remain in effect except to the extent that they are inconsistent, amended, or revoked. Nothing herein shall affect the validity of any action taken under prior delegations or redelegations of authority or assignments of functions.

June 16, 1989.

J. Patrick Boyle,
Administrator.

[FR Doc. 89-15026 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 88-210]

Selection of Members for the Secretary's Advisory Committee on Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture is soliciting nominations for membership on the Secretary's Advisory Committee on Swine Health Protection.

DATE: Written comments must be received or postmarked on or before July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Stewart, Chief Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, Room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7767.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture hereby solicits nominations for membership on the Secretary's Advisory Committee on Swine Health Protection (Committee). The Committee advises the Secretary of Agriculture on a variety of matters, including:

1. Evaluating the adequacy of state laws and regulations that pertain to the treatment of raw garbage fed to swine, including assurance that these laws and regulations meet minimum standards under the Swine Health Protection Act (the Act).

2. Assuring that states implement procedures necessary for effective enforcement of state laws pertaining to the treatment of raw garbage fed to swine.

3. Assuring coordination of the states' swine health protection programs and Federal-state cooperative programs.

4. Identifying methods for improving the treatment of raw garbage fed to swine.

5. Ensuring that records are kept and reports submitted demonstrating state compliance with the Department's swine health protection regulations.

6. Recommending improvements to the Swine Health Protection regulations implementing the Act.

We are soliciting nominations for the Committee from interested individuals and organizations, including state agricultural and animal health agencies, the food waste feeder industry, animal health organizations, and swine producer organizations. An organization may nominate individuals from within or outside its membership. However, the

Secretary's selection of members to the Committee will not be limited to these nominations so that the Secretary can obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act and USDA Departmental Regulation 1041-1. It is a policy of the USDA that no person shall be discriminated against on grounds of race, color, religion, sex, national origin, age, or handicap.

Information concerning the nomination process can be obtained from Dr. William C. Stewart at the address and telephone number listed in this document.

Done in Washington, DC, this 20th day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15023 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: July 27, 1989.

Place: Red Lion Inn at the Quay, 100 Columbia Street, Vancouver, Washington 98660.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The Agenda includes: (1) Soybean oil and protein update, (2) wheat dockage and foreign material study, (3) financial matters, (4) OTA followup, (5) research activities, and (6) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 382-0219.

Dated: June 30, 1989.
 W. Kirk Miller,
 Administrator.
 [FR Doc. 89-15017 Filed 6-23-89; 8:45 am]
 BILLING CODE 3410-EN-M

Forest Service

Screening of Effects of Proposed Emissions on Air Quality Related Values in Class I Wilderness Areas

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: On April 24, 1989, at 54 FR 16382, the Forest Service published a notice of intent to use a screening procedure for the initial review of permit applications from proposed new or modified major sources of air pollution that might affect air quality related values in 88 class I wilderness areas managed by the Agency. The comment period on the proposed screening procedure was to end June 23, 1989. In response to requests for more time to comment on the proposed screening procedure, the Forest Service is extending the public comment period for 15 days.

DATE: Comments on the proposed screening procedure must now be received in writing by July 11, 1989.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2580), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: James G. Byrne, Watershed and Air Management Staff, 703-235-8096.

Date: June 20, 1989.
 George M. Leonard,
 Associate Chief.
 [FR Doc. 89-15018 Filed 6-23-89; 8:45 am]
 BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Subsequent Purchaser Reports
Form Number: None. OMB-0648-0079
Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 150 respondents; 150 reporting hours; average hours per response—.5 hours

Needs and Uses: Persons purchasing endangered species parts from Certificate of Exemption holders are required to file a report if they intend to resell or otherwise keep the items in the stream of commerce. The reports identify the purchaser and the exact items purchased. The information is used to help enforce the Endangered Species Act and to track the legal interstate sale of the items.

Affected Public: Business or other for profit, small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Mandatory
OMB Desk Officer: Russel Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 16, 1989.
 Edward Michals,
 Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-14955 Filed 6-23-89; 8:45 am]
 BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 9104-01; 9104-02]

Action Affecting Export Privileges: Lennert Appelberg, Appelberg Financial Services

In the Matter of: Lennert Appelberg, individually and doing business as Appelberg Financial Services Respondents.

Summary

Pursuant to the May 24, 1989, the Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Respondent, Lennert Appelberg, individually and doing business as Appelberg Financial Services, Filip Manssonsvag 1, S-13300 Saltsjobaden, Sweden, and all successors, assignees, officers, partners, representatives, agents and employees of Respondent, are hereby denied for a period of fifteen years from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving

commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR Parts 768-799).

Order

On May 24, 1989, the ALJ entered his Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Date: June 19, 1989.

Joan M. McEntee,
 Acting Under Secretary for Export Administration.

Decision and Order

In the Matter of: Lennart Appelberg,¹ individually and doing business as Appelberg Financial Services, Respondents.

[Docket No. 9104-01; 9104-02]

Appearance for Respondent: Lennart Appelberg, Filip Manssonsvag 1, S-13300 Saltsjobaden, Sweden.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Ave. NW., Washington, DC 20230.

Preliminary Statement

The Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a February 8, 1989 charging letter against Respondent Lennart Appelberg, individually and doing business as Appelberg Financial Services. The letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended (the "Act"), and under the authority of the Export Administration Regulations (the "Regulations"), promulgated pursuant to the Act.²

¹ Respondent Appelberg's first name is spelled "Lennert" in those filings by the Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce that were drafted by the Agency. It is, however, spelled "Lennart" in Exhibits 2, 3, 6, 8, 10, 12, and 13 to the May 11, 1989 Motion filed by the Agency. The spelling used in this Decision and Order is "Lennart," and the Decision and Order apply to Respondent Appelberg under either spelling of his first name.

² The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and

Continued

The charging letter alleged that in 1985 Respondents, in conspiracy with others, including Goran B. Josberg, a person denied U.S. export privileges, obtained a U.S.-origin computer from a distributor in Sweden and reexported it to the Soviet Union without the required U.S. authorization. These actions of Respondents, according to the charging letter, violated §§ 787.3(b), 787.4, 787.6 and 787.12 of the Regulations.

When two months had passed after issuance of the February 8, 1989 charging letter without Respondents having filed an answer, an Order of April 10, 1989 declared Respondents to be in default and directed the Agency to make the default submission prescribed by § 788.8 of the Regulations. The Agency made that submission on May 11, 1989. Respondents have to date filed no submission in this proceeding.

Discussion

The Agency's default submission contained evidence of service of the charging letter on Respondents (May 11, 1989 Motion, Exhibit (hereinafter "Exh.") 1). The Agency's submission further presented evidence that in 1985 Respondents participated with others in obtaining a computer from a Swedish distributorship. This evidence included commercial documents connected with the transaction (*id.* Exh. 3, 5, 9), each of which bore Respondent Lennart Appelberg's signature, a certificate signed by him (*id.* Exh. 12), and statements by others describing his role (*id.* Exh. 2, 8, 10).

To show the alleged reexport of the computer from Sweden to the Soviet Union, the Agency also presented several documents. A commercial document signed by Respondent Lennart Appelberg (*id.* Exh. 3) and a written statement by a part owner of the distributorship (*id.* Exh. 6) said that Respondent Lennart Appelberg picked up the computer at the distributorship on December 27, 1985. Two days later, on December 29, 1985, according to an air waybill introduced by the Agency (*id.* Exh. 11), Respondents made a shipment from Sweden to Moscow, USSR of "Data Equipment".

To document further the alleged reexport, the Agency presented a certificate signed by Respondent Lennart Appelberg (*id.* Exh. 12) in which he declared that he had obtained the computer from the distributorship in

December 1985 and had delivered it to Josberg. According to additional Agency evidence, Josberg had said that he did a majority of his business with the Soviet Union, that he exported to it computers manufactured by the company that made the one involved in this proceeding, and that he operated out of a Moscow hotel room (*id.* Exh. 2). Lastly, the Agency pointed out that the consignee in the air waybill for Respondents' December 29 shipment was a Moscow hotel (*id.* Exh. 11).

To prove that the computer involved in the transaction was of U.S.-origin, the Agency cited the serial number of the computer as reflected in one of the commercial documents for the transaction (*id.* Exh. 3), together with a letter from the computer's manufacturer stating that the computer with that number would have been made in the United States (*id.* Exh. 4). Further Agency evidence showed that, for national security reasons, this computer required U.S. authorization for reexport to the Soviet Union, although a presumption of approval may have existed for a properly filed application (*id.* Exh. 14); and the Agency showed that Respondents had made no application (*id.* Exh. 13).

As for Josberg, the Agency introduced a December 28, 1983 Temporary Denial Order naming him (*id.* Exh. 15) to show that he was a person denied U.S. export privileges during 1985. The Agency further presented evidence of statements made by Josberg indicating a knowledge of U.S. export control laws (*id.* Exh. 2, 16), and from this evidence argued that this same knowledge could be attributed to Respondents as alleged co-conspirators.

All told, the Agency contended that Respondents' actions contravened §§ 787.3(b), 787.4, 787.6, and 787.12 of the Regulations. For a sanction, the Agency, emphasizing the deliberateness of Respondents' actions, proposed a twenty-year denial of U.S. export privileges.

Conclusion

The Agency's presentation clearly established that Respondents participated with other persons in 1985 in obtaining a computer from a Swedish distributorship; the three commercial documents signed by Respondent Lennart Appelberg, together with the other evidence, serve as ample proof on that point. The certificate signed by him stating that he obtained the computer from the Swedish distributorship and delivered it to Josberg reasonably connects his obtaining of the computer to Josberg.

The Agency also clearly documented other elements in its cause of action. These elements include: that the computer was of U.S. origin; that a U.S. authorization was required for its reexport to the Soviet Union; that Respondents failed to obtain that authorization; that Respondents knew, or reasonably should have known, that such an authorization was required; and that Josberg was a person denied U.S. export privileges.

That Respondents reexported the computer from Sweden to the Soviet Union is less susceptible of a direct showing. But the Agency did present a body of circumstantial proof, described above, that successfully established the alleged reexport by a preponderance of the evidence.

From the above points established by the Agency, the conclusion follows that Respondents violated §§ 787.3(b), 787.4, and 787.6 of the Regulations by participating in the reexport of a U.S.-origin computer from Sweden to the Soviet Union without the U.S. authorization that Respondents knew or reasonably should have known was required. Further, because Josberg obtained benefit from and had an interest in this reexport, Respondents also violated § 787.12 of the Regulations.

Respondents' transgressions are serious, and as such merit a significant sanction. But the twenty years proposed by the Agency is slightly high. In a case earlier this year involving Josberg, the Agency proved violations by Josberg in a whole series of transactions (including the computer transaction with which Respondents are charged); and as a sanction, the Agency's proposal, which was adopted in the Decision and Order, was for a denial period of 35 years (54 FR 9537, March 7, 1989). Consequently, Respondents' violations in only this single computer transaction warrant a decidedly lesser term. By that standard, a sanction for Respondents of a fifteen-year denial of export privileges would be fair; it would also constitute a significant and an adequate sanction.

The proposed sanction for Respondents may be measured also against the sanctions imposed by this Tribunal on other respondents who were involved in transactions with Josberg. Three other cases were initiated by the Agency against such respondents: in one, the charges were dismissed; and in each of the other two, violations were found and denial periods were imposed, of twenty years and of ten years respectively. These two cases were: *Elzer* (twenty years), 53 FR 26676, July 29, 1988; and *Keck* (ten years), 54 FR 11775, March 22, 1989. A review of the

Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 369-399, were redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

degree of culpability of the respondents in these two cited cases as compared with Respondents' culpability here suggests that fifteen years for Respondents would be consistent with these prior decisions. Accordingly, it shall be so ordered.

Order

I. For a period of fifteen years from the date of the final Agency action, respondents

Lennart Appelberg individually and doing business as Appelberg Financial Services, Filip Manssonsveg 1, S-13300 Saltsjobaden, Sweden

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for

cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Thomas W. Hoya,

Administrative Law Judge.

Date: May 24, 1989.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-14939 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 8118-01]

Data General Corp., Respondent; Order of Dismissal

Background

The Administrative Law Judge (ALJ) on May 19, 1989, issued an order dismissing this proceeding. That order is before me for review under 50 U.S.C. App. 2412(c).

The charging letter alleges 96 separate violations of § 387.6 of the Export Control Regulations in effect in 1983 and 1984 (1983/84 Regulations), 96 separate violations of § 387.4(a) of the 1983/84 Regulations, and 16 separate violations of § 387.7 of the 1983/84 Regulations. In total, the charging letter alleges 208 separate violations of the 1983/84 Regulations.

This case has had a tortuous procedural history, including a previous dismissal of the proceedings by the ALJ which was vacated by the Under Secretary on November 17, 1988. The dismissal now before me for review results from a serious of incidents following the breakdown of settlement negotiations in late April of this year. First the ALJ refused the Department's request for an extension in time to answer Respondents outstanding motion to compel a response to requests of admissions. The Department then filed a motion for judgment on the pleadings which was rejected by the ALJ as "unresponsive and untimely." The Department then refused to comply with the ALJ's May 9 order requiring a response to Respondents outstanding requests for answers to interrogatories and production of documents, insisting that the ALJ should rule on the merits of the Department's motion for judgment on the pleadings. On account of the Department's refusal to comply with his May 9 order, the ALJ issued the order of dismissal now before me for review.

In his order of dismissal, the ALJ found that the Department's refusal to comply with orders relating to discovery prevented the development of a full record leaving no alternative but dismissal of the case. The Department, on the other hand, contends that the case can be decided on the existing record and that the ALJ's refusal to rule on the merits of the Department's motion for judgment on the pleadings as well as other allegedly arbitrary and capricious procedural rulings constitute abuses of discretion. Needless to say, Respondents supports the order of dismissal.

Discussion

The record in this proceeding reveals a climate of animosity between the ALJ and the Department inconsistent with effective enforcement of export controls and obtaining a sound resolution of this case. Some of the ALJ's procedural rulings appear to result from less than judicious consideration. In particular, the ALJ's summary refusal to accommodate the joint request to extend procedural deadlines appears arbitrary in the absence of any indication that the extension would inconvenience the tribunal. On the other hand, while a careful reading of the Department's motion for judgment on the pleadings reveals that it was intended to be responsive and not in disregard of the ALJ's May 1 order requiring a response to Respondent's motion to compel discovery, that document could have been better drafted to make that point more clearly.

The Department decision to file a motion for judgment on the pleadings in a case involving substantial allegations going to the issue of mitigation is also subject to question. In seeking to have the entire case resolved on a motion for judgment on the pleadings, the Department has necessarily conceded that all allegations of Respondent going to mitigation should be accepted. Yet, these allegations appear to be so substantial and extensive as to support a cogent argument that not more than nominal sanctions should be imposed even if the alleged violations of the regulations are proven.¹ Without some better showing than more than nominal sanctions should be imposed if the alleged violations are proven, I cannot find that vacating the order of dismissal and remanding the proceeding for consideration of the motion for judgment on the pleadings would serve the cause of fair and effective enforcement of the Export Control Regulations. Accordingly, for the reasons just stated rather than the reasons stated by the ALJ in support of his order of dismissal, I have decided that the order of dismissal should be affirmed.

Order

Having examined the record, and based on the facts before me in this case, I hereby affirm the ALJ's

recommendation that these proceedings be dismissed.

This constitutes final agency action on this matter.

Date: June 19, 1989.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

DEPARTMENT OF COMMERCE

Office of Administrative Law Judges

Washington, DC 20230

[Docket No. 8118-01]

In the Matter of Data General Corp., Respondent.

Appearance for Respondent: Richard S. Elliott, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, 1615 L Street NW., Suite 1300, Washington, DC 20036.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Ave. NW., Washington, DC 20230.

Order of Dismissal

The charging letter and the proceeding are hereby Dismissed.

Agency Counsel, in his filing on May 12, 1989 refused, without explanation or statement of objections, to respond to the pending discovery requests. Such refusal denies this Tribunal the exercise of its function to rule on objections in such situations and makes the further conduct of the proceeding a farce. The approach of Agency Counsel does not appear to have changed in the two years since the Order quoted below was issued. In relevant part it said:

The record clearly reflects and demonstrates that the Department's dilatory tactics respecting discovery have and continue to impair the orderly progress of this proceeding, including the Respondent's ability to develop and present its equitable defenses. Further, it is noted that this cited refusal is but another, in a pattern of Agency countenanced actions on the part of its officials and counsel, which demonstrate a continuing pattern of interference and obstruction of the functional independence of the Administrative Law Judge to conduct fair and impartial due process adjudications under the Administrative Procedure Act and the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (*Nash v. Califano*, 613 F.2d 10 (1980)).

The record of interference and obstruction is demonstrated and documented in the correspondence and the disposition of numerous cases over the past year since the above Act was implemented culminating in the incomplete "Request to Amend Charging Letter" filed by Agency Counsel on December 19, 1986. As with the other of Agency Counsel's filings which are incomplete and

mistake the record, it does not provide a basis for coherent action, nor does it reflect the specific guidance given during the December 19 conference. Over the last decade, Agency Counsel appears to have presided over a compliant and secretive administrative adjudicatory process facially patterned to provide a fair hearing, but in fact, devoid of independent consideration or review. The submissions and comments clearly demonstrate Agency Counsel's unwillingness to permit independent inquiry or adjudication, even in the limited area of discovery as provided in the Agency Regulations 55 CFR 388.9 Administrative Conference Recommendation 21, and the relevant Federal Rules of Civil Procedure.

Action is deferred on all other aspects of the Motion except with respect to attorney's fees which is denied. While it is abundantly clear that the Counsel and the Agency's failure was not substantially justified and such award of expenses would not be unjust, applications for attorney's fees under the Equal Access to Justice Act to the Department of Commerce are to be filed in the manner prescribed in 15 CFR Part 18. Since no such filing was made, no proper adjudication may be considered here. Counsel's attention is also invited to the recent administrative decision, in the matter of Robert W. Haire, Sr., Docket No. 601-172, December 16, 1986, which would deny such recovery even under the Equal Access to Justice Act, the statutory basis for the sovereign immunity waiver. Here, resort to an Article III court of competent jurisdiction would appear to be more the appropriate forum to adjudicate the question of fees and expenses in the course of the judicial proceeding.

(Extract from Order of December 22, 1986 in *D.S.E., Inc.*, Docket No. 6679-01).

Background

The charging letter covering these alleged 1983-1984 violations was initially dated July 1, 1988. Differences concerning the sufficiency of both the initial and amended charging letter were determined by the Under Secretary's Order of November 17, 1988. An answer was filed on December 19, 1988. The usual requests were made for the parties to state their position on January 11, 1989, and such filings were made before the scheduling Order was issued on February 17, 1989. On March 9, 1989, Respondent filed requests for Discovery. A Motion to Compel Discovery was filed and an Order issued on April 7, 1989, to which a response was directed by April 18. The period in which to respond to the Motion to Compel was thereafter extended to April 28. In this period it was represented that settlement was imminent. However, the proceedings were not suspended and when further extension was requested on the due date April 28, it was denied by Order of May 1, 1989, with the admonition that a complete response was to be filed on

¹ Particular note has been taken to claims asserted by Respondent in mitigation. First, Respondent claims that the alleged violations have already been adequately sanctioned by the Department's having summarily suspended Respondent's distribution license in September of 1984 costing Respondents millions of dollars in lost sales. Second, Respondent claims that its post 1984 adherence to the Export Control Regulations has been exemplary.

May 2, and that sanctions would be deferred pending that filing. On May 2, 1988, the contemplated filing was not made. Rather, Agency Counsel filed a Motion for Judgment on the Pleadings, which was denied as unresponsive and untimely. By Order of May 5, 1988, Agency Counsel was again given the opportunity to respond to the outstanding discovery requests, this time by May 9, 1988. On May 5, Agency Counsel filed an interlocutory appeal with the Under Secretary, without prior notice or request for certification of the question posed, to this Office.¹ Following a further extension to May 12, 1989 for the Agency to respond to all of the Discovery requests, Agency Counsel, on that date filed a pleading declining to respond to the discovery requests. On May 16, 1988, following the initial drafting of this Order, Respondent's Counsel filed a Motion to Dismiss.

Discussion

In the present incomplete state of the record this Tribunal perceives no alternative to dismissal of the case, regrettable though that course of action is. Agency Counsel's actions have effected a statemate preventing development of a complete record. The comments on behalf of the Agency in its Appeal respecting its Motion To Dismiss are at least misleading. The appropriate time for filing a Motion to Dismiss is following the filing of Respondent's answer. While no time is established in the rules for such filing, orderly practice, particularly with respect to such a dispositive Motion, warrants it as well as other such Motions that are directed to the contents of pleadings, being made as soon after the filing as possible. In addition to the filing being out of time, it was made in lieu of the response to Discovery. Since the Agency was then in default, it was in no position to pray for, urge, request or compel dispositive action on an alternative request. Without a delay to allow for the Respondent's Counsel to respond, which would materially alter the course and timing of the proceeding, a ruling on the substance of the Motion would have been clearly premature and inappropriate. The parties had been advised of the pre-hearing and hearing dates. Administrative arrangements had

been initiated. Witnesses and other schedules had been set. By such tardy filing, Counsel was not entitled to disrupt the process in this already stale proceeding. If Agency Counsel had such confidence in the position asserted, the outcome sought should have been perceived as inevitable and the proceedings respecting discovery and hearing could have continued as provided by the regulations and the announced schedule. The pre-hearing conference would have been an appropriate time and place to go over each of the asserted admissions contained in the Motion. They would, at that point, have been the basis for a specific finding on the record or identified as an area for dispute to be resolved at the hearing. For Agency Counsel to take the position that by some divine inspiration or manifest destiny only he has the vision of immutable truth and right, demonstrates an unacceptable arrogance.

Discovery is specifically provided for in Agency Counsel's self scrivined regulations. A mockery has been made over the years of the valuable right, culminating in this most recent instance of refusal by Counsel to follow the agency regulations. No objection has been made to the discovery requests. No cause has been stated for not responding. An impudent refusal to participate in the process has been manifest by Counsel who is delinquent. The delegee of the Secretarial Authority may not countenance such misconduct.

The arguments of Respondents Counsel in support of this Motion to Dismiss are adopted and incorporated herein.

Hugh J. Dolan,

Administrative Law Judge.

Date: May 19, 1989.

[FR Doc. 89-14938 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-122-806]

Final Determination of Sales at Less Than Fair Value; Generic Cephalixin Capsules From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that generic cephalixin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our

determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of generic cephalixin capsules from Canada, as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or threaten material injury to, a United States industry. We also determine that critical circumstances do not exist with respect to imports of generic cephalixin capsules from Canada.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION:

Contact Karri Leiman or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; (202) 377-8371, (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that generic cephalixin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided for in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) ("the Act"). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances do not exist with respect to generic cephalixin capsules from Canada.

Case History

On April 7, 1989, we made an affirmative preliminary determination (54 FR 14669, April 12, 1989). The following events have occurred since the publication of that notice.

On April 12, 1989, a disclosure conference was held with the respondent, Novopharm, Ltd. ("Novopharm"), to explain the methodology used in the Department's preliminary determination. A disclosure conference was held with the petitioner, Biocraft Laboratories, Inc., on April 13, 1989. The petitioner submitted comments pursuant to the disclosure conference on April 17, 1989.

Novopharm's response to the Department's second deficiency letter (dated April 4, 1989) was submitted in two parts. Appendices A and B were received on April 18, 1989, and the balance of the response, including two computer tapes, was received on April 19, 1989. Two corrected tapes were filed on April 20, 1989.

¹ The manner of filing the interlocutory appeal is well calculated to deny to the Secretary's delegatee a full basis of decision. The usual and better course in such exceptional instances is for the moving party to request certification of the question by the Administrative Law Judge, noting the intention to file such appeal. The Administrative Law Judge and the opposing party then have the opportunity to comment, presenting the appellate authority with a complete record for a prompt adjudication.

The Department received a request from respondent on April 21, 1989, for a public hearing to comment on the preliminary determination. A request for a public hearing was received from petitioner on April 24, 1989.

The Department's verification at the Novopharm facility in Scarborough, Ontario, Canada took place from April 24 through April 28, 1989. Verification took place at the headquarters of LyphoMed/Novopharm Pharmaceutical Company ("the joint venture") and LyphoMed, Inc. ("LyphoMed") in Rosemont, Illinois from May 1 through May 5, 1989.

Case briefs were submitted by both the petitioner and the respondent on May 31, 1989. On June 5, both parties submitted rebuttal briefs. The public hearing was held on June 7, at which counsel for both parties were present.

On June 9, 1989, the Department received post-hearing comments from the petitioner.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS subheading(s). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are generic cephalixin capsules from Canada. Generic cephalixin capsules are cephalixin monohydrate in capsule form. Cephalixin monohydrate is a semi-synthetic cephalosporin antibiotic intended for oral administration. Its chemical formula is $C_{16}H_{17}N_3O_4S \cdot H_2O$. Generic cephalixin capsules contain not less than 90 percent and not more than 120 percent of the labelled amount of cephalixin monohydrate. The capsule is made of a water soluble gelatin, designed to facilitate swallowing and a phased release of the drug into the user's digestive system.

Prior to January 1, 1989, such merchandise was classifiable under item 411.7600 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS subheading 3004.20.00.

Period of Investigation

The period of investigation is May 1, 1988, through October 31, 1988.

Fair Value Comparisons

To determine whether sales of generic cephalixin capsules from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value ("FMV"), as specified below.

United States Price

We based United States price on exporter's sales price ("ESP"), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation of the subject merchandise. We analyzed sales by the joint venture and by LyphoMed. To calculate ESP, we used the packed, ex-warehouse or delivered, duty-paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, U.S. inland freight, U.S. and foreign brokerage and handling charges, insurance, and U.S. duty, in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for discounts, rebates, and price protection payments.

In accordance with section 772(e)(2), we made additional deductions, where appropriate, for credit expenses, commissions, royalties, and indirect selling expenses, including: Pre-sale warehousing, inventory carrying costs, advertising, and other indirect selling expenses. The total of the U.S. indirect selling expenses formed the cap for the allowable home market indirect selling expenses offset under § 353.56(b) of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR).

Pursuant to section 772(d)(1) of the Act, we added duty drawback paid by the Canadian government to respondent as a rebate of duties paid on imports of raw cephalixin.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on the packed, delivered home market prices to unrelated purchasers. We made deductions, where appropriate, for freight to warehouse, inland insurance, discounts, rebates, credit expenses, royalties, warranty expenses, and commissions. We also deducted indirect selling expenses, including: Inventory carrying costs, advertising, warehousing expenses, and other indirect selling expenses. These expenses were capped by the amount of indirect selling expenses incurred on

sales in the U.S. market, in accordance with § 353.41 of our new regulations.

In order to adjust for differences in packing between the two markets, we deducted Canadian home market packing costs from foreign market value and added U.S. packing costs.

Pursuant to section 773(a)(4)(C) of the Act, we made further adjustments to the home market price to account for differences in merchandise. In calculating the difference in merchandise adjustment, we used only those cost differences related to physical differences in the merchandise.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York in accordance with § 353.60 of the Department's new regulations.

Verification

We verified the information used in making our final determination in this investigation in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Canada. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories,

we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances.

Based on our analysis of the monthly shipment data submitted by the respondent, we have found that imports of the subject merchandise have been massive over a relatively short period of time because they increased by more than 15% in the period following the Department's initiation. While some of this increase may have been due to seasonal fluctuations in the demand for the subject merchandise, we were presented with insufficient data to determine the extent of any seasonality. Therefore, we find that the requirements of section 735(a)(3)(B) are met.

We have examined antidumping duty measures undertaken by foreign countries as reported through the GATT Committee on Antidumping Practices. We found no record of antidumping orders on generic cephalixin capsules from Canada. Therefore, we find that the requirements of section 735(a)(3)(A)(i) are not met. As for section 735(a)(3)(A)(ii), it is our standard practice to impute knowledge of dumping when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise.

The estimated margins found in this determination are not sufficiently high to impute knowledge of dumping. Therefore, despite the existence of massive imports, we conclude that critical circumstances do not exist with respect to imports of generic cephalixin capsules from Canada.

Interested Party Comments

Comment 1: Respondent requests that the Department make an allowance for quantity discounts pursuant to § 353.55 of the Department's new regulations by comparing the highest volume sales in the United States with the highest volume sales in the home market. Respondent claims that it is eligible for a quantity discount adjustment under both § 353.55(b)(1) and (b)(2). It claims that it granted quantity discounts on more than 20 percent of its home market sales during the period of investigation ("POI"). It also claims that its U.S. quantity discounts are attributable to production cost savings.

Petitioner argues that the Department should not make an allowance for quantity discounts. Petitioner claims that respondent has not satisfied the requirements of section 353.55 because it did not grant comparable quantity discounts on at least 20% of its home market sales, nor has it shown that the

discounts it offers in either the home market or the United States are related to economies of scale associated with the production of larger quantities of cephalixin capsules.

DOC Position: In order to make the most reasonable comparison, the Department has compared sales to buying groups and government agencies in the home market with sales to purchasers of large quantities in the United States. Similarly, we have compared sales to purchasers other than buying groups and government agencies in the United States.

Because of this, we have not applied a quantity discount adjustment to foreign market value, as provided for under § 353.55(b)(1) or (b)(2). Moreover, respondent's claim for such an adjustment was not adequately supported.

Comment 2: Petitioner argues that the Department should exclude variable factory overhead and direct labor costs from the adjustment for physical differences in merchandise. Further, the cost data excluded from the adjustment for physical differences in merchandise should not be allowed as a quantity adjustment.

Respondent argues that all costs (factory overhead, labor, and materials) associated with producing physically different merchandise should be included in the adjustment for physical difference in merchandise. Should the Department exclude these costs from the adjustment for physical differences in merchandise, respondent maintains that the costs should be used to adjust the FMV in accordance with § 353.55(b)(2).

DOC Position: To the extent that physical differences exist between the merchandise sold in the U.S. and home markets, the Department adjusts the observed FMV by the net differences in variable costs associated with those differences, in accordance with § 353.57. In this instance, respondent was unable to show that differences in variable factory overhead and direct labor costs are associated with physical differences in the merchandise. The Department therefore did not adjust the FMV by the net difference in these costs. Respondent did demonstrate that differences in the costs of materials for the products sold in the two markets were associated with physical differences in the merchandise. Therefore, we adjusted FMV for the difference in material costs.

Further, as explained in Comment 1 above, the Department did not adjust the FMV by the net difference in manufacturing costs pursuant to § 353.55(b)(2).

Comment 3: Petitioner argues that due to Canadian government dominance of the home market, sales to government agencies and hospitals should be excluded from the FMV because these sales are not made under "free market conditions. Petitioner asserts that sales are as "state controlled" as sales in Poland or Hungary.

DOC Position: We disagree and have included sales to government agencies and hospitals in the home market in the weighted-average FMV. There is no foundation in the statute, regulations, or in Departmental practice for finding "state control" of only certain sales to certain purchasers in a market economy.

Comment 4: Respondent asserts that date of sale for all sales in both the U.S. and home markets is the date of shipment. The terms of the sales are subject to change up to the time of shipment of the merchandise.

DOC Position: We agree. We recognize a sale when all terms, including price and quantity, are fixed. We have reviewed numerous examples of respondent's contracts in both the U.S. and home markets. We determined that the terms of sale, including price and quantity, are subject to change until the shipment date.

Comment 5: Petitioner argues that the magnitude of the difference between the packing costs reported for U.S. sales and packing costs reported for Canadian sales raises doubts about the accuracy of the information.

Doc Position: We disagree. We examined packing costs for both markets at verification and found the reported costs to be accurate.

Comment 6: Petitioner argues that due to the frequency of erroneous data discovered by the Department at verification, the Department should adjust all reported values in a given category to reflect the average differential between the reported values and the verified values.

DOC Position: In making our final determination, we used only verified information. We did not adjust all reported values as petitioner has suggested. In certain instances, we used respondent's revised figures, which reflect the correction of errors found at verification. We did not make deductions for home market freight costs to customers or for cash discounts because of pervasive errors in the reported data.

Comment 7: Petitioner agrees with the Department's preliminary determination finding evidence of "massive" imports by respondent after the Department's initiation, but disagrees with the Department's conclusion that the

importer did not know of sales at less than fair value. Petitioner argues that the price differential between the U.S. and home markets was large enough to impute knowledge of dumping by the importer because there is a close corporate relationship between the exporter and importer. This relationship permitted the parties to know that the goods were selling in the United States at less than fair value. Petitioner asks that the Department conclude that critical circumstances exist.

Respondent agrees with the Department's preliminary determination finding that no critical circumstances exist and argues that the estimated margins are not sufficiently high to impute knowledge of dumping. Respondent states that its exports of the subject merchandise were not "massive." Rather, it contends that it was filling pre-investigation contracts that were made when "seasonal" orders were high. Respondent states that despite the relationship between the companies, the Department's analysis is sufficiently complex and the margins sufficiently low that it was not possible to know that sales were made at less than fair value.

DOC Position: The Department has determined that critical circumstances do not exist with respect to imports of the subject merchandise, as explained in the "Critical Circumstances" section of this notice.

Comment 8: Respondent argues that the Department should treat advertisements by the joint venture as indirect selling expenses, and not as direct selling expenses, because the advertisements were directed at customers of the joint venture, and not to customers of these customers.

Petitioner argues that the wording of the promotional flier can be construed as directed either at customers of the joint venture or at the customer's customers. Hence, the joint venture's advertising should be deducted directly from the U.S. price.

DOC Position: We agree with respondent. We examined the joint venture's advertising at verification and found that these advertisements were directed at first level purchasers and not at the customer's customer.

Comment 9: Respondent argues that the Department should use the interest rate on LyphoMed's convertible subordinated debentures issued in the United States in March, 1987, in its calculation of credit and inventory carrying costs for U.S. sales. Respondent argues that while the actual interest paid may fall below generally available rates of interest during the period, the Department should follow its

established policy of using actual costs rather than imputing hypothetical credit costs.

Petitioner argues that the rate paid to holders of the debentures does not accurately reflect respondent's costs of financing its operations in the United States. The interest rate paid on the debentures omits the cost to respondent of the outstanding equity rights enjoyed by the debenture holders.

DOC Position: We agree with petitioner. We recalculated U.S. inventory carrying costs and credit costs using the prime rate in effect during the period of investigation. The outstanding debentures contain a stock convertibility option. This option represents a real, though unquantifiable, cost to respondent over and above the cost of the interest payments to the debenture holders. In the absence of actual quantifiable short-term borrowing costs, the Department uses the prime rate as the best information available.

Comment 10: Respondent argues that advertising expenses incurred by LyphoMed on the sales of its products sold under the LyphoMed name should not be deducted as a circumstance of sale adjustment nor included in the ESP cap. Respondent claims that advertising for LyphoMed products bears no relationship to the sale of products, including cephalexin capsules, bearing the "LyphoMed/Novopharm" name.

Petitioner argues that LyphoMed's advertising benefits LyphoMed/Novopharm products as well as LyphoMed products and that an allocated portion should be deducted from the U.S. price.

DOC Position: We agree with respondent and did not include LyphoMed's advertising in our calculation of U.S. price. LyphoMed, while one of the partners in the joint venture, is an independent corporate entity producing products other than the subject merchandise. There is no evidence that advertising for LyphoMed brandname products, which do not include generic cephalexin capsules, has any relation to U.S. sales of generic cephalexin capsules.

Comment 11: Respondent argues that the Department should not deduct from U.S. price, inventory carrying costs incurred between date of production and date of export. Respondent further argues that if the Department does deduct these costs, it should calculate these costs using Novopharm's actual borrowing rate during the POI.

DOC Position: It is the Department's practice to make an adjustment to U.S. price in ESP situations for inventory carrying costs incurred from the date of production to the date of export to the

United States because merchandise is held in inventory for this time period and this calculation thus more accurately reflects the cost to the manufacturer in an ESP situation. We calculated this adjustment using Novopharm's actual short-term borrowing cost. See, *Final Determination of Sales at Less than Fair Value: Industrial Phosphoric Acid from Belgium*, 52 FR 25436 (July 7, 1987); *Final Determination of Sales at Less than Fair Value: Industrial Forklift From Japan*, 53 FR 12552 (April 15, 1988).

Comment 12: Respondent believes that sales of "short-dated" merchandise in the United States should be excluded from the Department's fair value comparisons because they involved second quality merchandise. Respondent states that this merchandise was of lesser quality because the product was approaching the end of its shelf life and that a small amount of this merchandise was sold at reduced prices to a small group of customers during the period of investigation.

DOC Position: We agree with respondents. We excluded sales of short-dated merchandise from our value comparisons. At verification, we found that these sales accounted for an insignificant portion of total sales to the United States.

Comment 13: Respondent argues that the Department should accept its method of discounting to present value the post-sale payments for chargebacks and commissions in the United States. Respondent states that credit expense is distorted because it is calculated based on invoice gross unit price rather than the actual value of these sales, which is the invoice gross unit price less chargebacks and commissions. Respondent argues that by discounting to present value these post-sale adjustments it is compensating for the distortion of credit expenses.

DOC Position: We disagree with respondents. Imputed credit costs represent the costs of financing receivables, which are generally booked on the basis of invoice price. While post-sale expenses, such as commissions and chargebacks, affect the actual amount received by the seller, they do not affect the dollar value in receivables that is actually financed.

Comment 14: Respondent argues that its payments to a distributor in the home market are not commissions as originally reported, but are more properly categorized as rebates. Novopharm grants these post-sale price reductions regardless of whether the merchandise is resold. Respondent

argues that purchasers cannot receive a "commission" for their own purchases.

Petitioner argues that these payments should be treated as commissions because they are the distributor's sole compensation for selling Novopharm's products and the distributor makes these purchases for resale, not for its own use.

DOC Position: We agree with respondent. The payment to the distributor is a fixed percentage of the original invoice price and is made regardless of whether the merchandise is resold. The Department considers payments of this type to be rebates, not commissions. See, e.g., *Final Determination of Sales at Less Than Fair Value, Portland Hydraulic Cement From Japan*, 48 FR 41059, 41061 (Sept. 13, 1983).

Respondent reported commissions paid to its own employees, in both the home market and the United States. We treated these commissions to salesman to salesmen and order takers as direct selling expenses. It is the Department's practice to account for commissions of this type with a circumstance of sale adjustment when the commissions are directly related to specific sales. In this case, the company made payments equal to a specified percentage of the selling price. The respondent incurred the commission expense only if a sale was made. See, e.g., *Final Determination of Sales at Less Than Fair Value, Egg Filler Flats From Canada*, 50 FR 24009, 24010, (June 7, 1985); *Final Determination of Sales at Less Than Fair Value, Iron Construction Castings From Canada*, 51 FR 2412, 2414, (Jan. 16, 1986).

Comment 15: Respondent contends that the Department should deduct home market inventory carrying costs from foreign market value as a direct expense. Respondent states that because it tracks the time in inventory for each "lot" of cephalixin produced, it can compute the time in inventory for each capsule produced within each lot. Respondent argues that because it has tied inventory carrying costs to specific sales under investigation, these costs should be treated as direct selling expenses.

Petitioner argues that inventory carrying costs should be treated as an indirect selling expense. Petitioner argues that, even though respondent has the capability to track a batch of chemicals from mixing bowl to bottle, these costs are not incurred directly for the benefit of individual customers.

DOC Position: We agree with the petitioner. The ability to calculate inventory carrying costs for specific sales does not mean that these costs are

directly related to those sales. These costs are incurred regardless of whether the merchandise is sold and are, therefore, properly treated as indirect expenses.

Comment 16: Respondent contends that the Department should deduct warranty expenses from foreign market value as a circumstance of sale adjustment. Respondent states that it has identified the actual warranty expenses incurred during the period of investigation and it has shown that these expenses are directly related to sales under investigation.

Petitioner argues that respondent has not justified the difference between warranty expenses associated with sales in the United States and in Canada and, consequently, is not entitled to any adjustment. Petitioner further argues that if there are no warranty expenses in the United States, no adjustment should be made.

DOC Position: We agree with respondent. We examined warranty expenses at verification and found that the reported expenses were directly related to the sales under investigation.

Comment 17: Respondent contends that the Department should not impute post-sale payments for chargebacks and commissions for certain sales in the United States. Respondent states that its methodology for reporting these payments does not understate the actual expenses incurred on the sales under investigation.

Petitioner contends that the Department should impute post-sale payments for chargebacks and commissions on certain sales in the United States. Petitioner argues that, even though the expenses were not yet incurred, the expenses are understated because they will likely be incurred in the future.

DOC Position: We agree with respondent. At verification, we examined respondent's method for reporting these expenses and found it to be reasonable. We did not find that these expenses were understated.

Comment 18: Respondent maintains that the Department should make a circumstance of sale adjustment for quality control expenses. Respondent argues that the quality control expenses it incurred for products sold in the United States are different than quality control expenses incurred for products sold in Canada due to differing regulatory requirements in the two countries. Respondent further argues that these expenses relate directly to the sales under investigation and should be treated as direct selling expenses. Respondent states that if the Department does not treat these

expenses as direct, then these expenses should be treated as indirect selling expenses.

Petitioner argues that these expenses should be treated as indirect selling expenses because they are only indirectly related to the sales under investigation.

DOC Position: We agree with petitioner. These expenses are incurred regardless of whether a sale is made and are properly treated as an indirect selling expense.

Comment 19: Respondents argue that the expenses reported as "home market direct selling expenses" should be treated as direct selling expenses.

Petitioner argues that these expenses should be treated as indirect selling expenses because they are indirectly related to the sales under investigation.

DOC Position: We agree with petitioner. We examined the components of the reported "home market direct selling expenses," which included such items as salaries and training, and found that these expenses did not bear a direct relationship to the sales under investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of generic cephalixin from Canada, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after April 12, 1989, the date of publication of the preliminary determination in the *Federal Register*. The U.S. Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Novopharm, Ltd.....	7.50
All others.....	7.50

ITC Notification

In accordance with section 735(c) of the Act, we have notified the ITC of our determination. In addition, we are

making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration. The ITC has 45 days from this final determination to determine whether or not material injury exists, or if threat of material injury exists. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on generic cephalixin from Canada entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

June 19, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-14956 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-801]

Initiation of Antidumping Duty Investigation; Certain Steel Pails From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of certain steel pails materially injure, or threaten material injury to, a U.S. industry. If this

investigation proceeds normally, the ITC will make its preliminary determination on or before July 17, 1989. If that determination is affirmative, we will make a preliminary determination on or before November 7, 1989.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4087 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On May 31, 1989, we received a petition filed in proper form by the Pail Producers' Committee of the Steel Shipping Container Institute ("SSCI"), the individual members of the Committee and two non-member steel pail producers. In compliance with the filing requirements of section 353.12 of the Department's regulations (54 FR 12772, March 28, 1989), petitioner alleges that imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition, because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Commerce officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's revised regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations (54 FR 12773, March 28, 1989).

United States Price and Foreign Market Value

Petitioner bases United States price (USP) for tighthead steel pails on two

invoices from a U.S. distributor of imported steel pails from Mexico. Petitioner's foreign market value (FMV) for openhead steel pails is based on a price quote made by the manufacturer of steel pails in Mexico. Petitioner has added ten cents to the USP for tighthead steel pails in order to adjust for physical differences between tighthead and openhead steel pails. Based on a comparison of FMV to USP, petitioner alleges a dumping margin of 89.37 percent.

However, the Department recalculated the prices by subtracting ten cents from the FMV to adjust for physical differences between openhead and tighthead steel pails. Based on a comparison of FMV to USP as estimated by the Department, the petition alleges a dumping margin of 93.91 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain steel pails from Mexico and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by November 7, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouses, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Prior to January 1, 1989, certain steel pails were classified under item 640.3020 of the *Tariff Schedules of the United*

States Annotated (TSUSA), this merchandise is currently classifiable under HTS items 7310.21.0000 and 7310.29.0000.

The scope of this investigation includes certain steel pails from Mexico which are cylindrical containers of steel, with a volume (capacity) of 1 through 7 gallons, an outside diameter of 11 1/4 inches or greater, and a wall thickness of 29-22 gauge steel, presented empty. This merchandise includes openhead, tighthead, and dome top steel pails.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 17, 1989, whether there is a reasonable indication that imports of certain steel pails from Mexico materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 20, 1989.

[FR Doc. 89-15070 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-004]

Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administration review.

SUMMARY: On April 24, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order

on stainless steel wire rod from Spain. We have now completed that review and determine the net subsidy during the period January 1, 1987 through December 31, 1987 to be *de minimis*.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1989, the Department of Commerce ("the Department") published in the *Federal Register* (54 FR 16384) the preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain (48 FR 52; January 3, 1983). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Spanish stainless steel wire rod, which includes coiled, semi-finished, hot rolled stainless steel products of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, whether or not tempered or treated or partly manufactured. During the review period, such merchandise was classified under item numbers 607.2600 and 607.4300 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item numbers 7221.00.0020 and 7221.00.0040 of the Harmonized Tariff Schedule.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the net subsidy to be 0.42 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department will instruct the Customs Service to waive deposits of estimated countervailing duties, as

provided for by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the *Federal Register* on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Lisa Barry,

Acting Assistant Secretary for Import Administration.

Date: June 16, 1989.

[FR Doc. 89-14957 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DS-M

Decision for Duty-Free Entry of Scientific Instruments: Corrections

The Notices of Decision appearing on page 25148 in the *Federal Register* of June 13, 1989 should be corrected as follows:

In FR Doc. 89-14047, Docket Number: 88-031, column 1, line 32 should read 89-031 and in FR Doc. 89-14048, Docket Number: 88-032, column 2, line 48 should read 89-032.

Frank W. Creel,

Director.

[FR Doc. 89-14958 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

June 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new agreement year limits.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port.

For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral agreement and the Memorandum of Understanding dated October 17, 1988 between the Governments of the United States and Uruguay establish limits for the period July 1, 1989 through June 30, 1990.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see *Federal Register* notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

June 21, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton and Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, and the Memorandum of Understanding dated October 17, 1988 between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 3, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period which begins on July 1, 1989 and extends through June 30, 1990, in excess of the following levels of restraint:

Category	12-mo. restraint limit
334	87,450 doz.
335	75,281 doz.
433	15,727 doz.
434	23,462 doz.

Category	12-mo. restraint limit
435	47,384 doz.
442	33,519 doz.

Imports charged to these category limits for the periods July 1, 1988 through June 30, 1989 and January 1, 1989 through June 30, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The limits may be adjusted in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-14992 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 26, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 31, April 28, and May 5, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 13219, 18324 and 19428) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received in direct response to the proposed additions to the Procurement List. However, during the comment period, the Committee received a letter from the Governor of a State requesting that a portion of the annual Federal requirement for the surgical sponge, the compress and skullcap, and other dressings be shared with an Indian Tribe. According to the letter, the Tribe was in the process of developing the capability to produce these and other dressings. The Committee has decided to add the entire portion because under its regulations it is required to make a decision based upon the impact of a proposed addition on the current or most recent supplier for the item and not on a potential supplier. The Committee also noted that taking the approach proposed by the Governor would not assure that the Indian Tribe in question would receive a contract for the remaining portion of the annual requirement. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at fair market prices and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities and service listed.
- The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1989:

Commodities

Strap, Assembly
4935-00-784-0141
(Requirements of U.S. Army Missile Command, Redstone Arsenal, Alabama only)
Compress and Skullcap, Head Dressing
6510-00-201-7680
Sponge, Surgical, Gauze, Compressed
6510-00-926-9082

Service

Janitorial/Custodial

Buildings 280 and 281, Area A
Wright-Patterson Air Force Base, Ohio
E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 89-14940 Filed 6-23-89; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before July 26, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Bandage, Gauze, Compressed,
Camouflaged
6510-00-200-3185
Envelope, Wallet
7530-00-268-3993

Services

Commissary Shelf Stocking
Naval Outlying Landing Field
Imperial Beach, California
Commissary Shelf Stocking, Custodial
and Warehouse Service
Randolph Air Force Base, Texas
Janitorial/Custodial
U.S. Army Reserve Center
2552 Avery Avenue

Memphis, Tennessee
E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 89-14941 Filed 6-23-89; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Brilliant Pebbles; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Brilliant Pebbles will meet in closed session on July 10-11, 1989 at Lawrence Livermore Laboratory, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will discuss classified technical and programmatic details associated with the Brilliant Pebbles space-based interceptor concept including technical maturity, potential military effectiveness, and cost and schedule risk associated with the development, testing and possible deployment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 52b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-15003 Filed 6-23-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 17-27 July 1989.

Times of Meeting: 0800-1730 hours weekdays and as needed on weekends.

Place: Military Academy, West Point, New York

Agenda: The Army Science Board 1989 Summer Studies on "International Cooperation and Data Exchange to

Enhance the Army's Technology Base" and "Maintaining State of the Art in the Army Command and Control System" will meet for cumulative briefings, discussions, and report writing sessions for development of the final reports. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary and nonproprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202)965-3039 or 695-7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 89-14998 Filed 6-23-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Additional Public Hearing and Extension of the Public Comment Period

AGENCY: Department of Energy.

ACTION: Addition of a public hearing in Utah on the draft Supplement to the Environmental Impact Statement (SEIS) on WIPP and the extension of the public comment period

SUMMARY: On April 21, 1989, the Department of Energy (DOE) published a notice in the *Federal Register* (Volume 54, Number 76, pp. 16350-2) announcing the availability of the Draft SEIS, the subsequent 60-day public comment period, and the six public hearing schedules, locations, and procedures. Also, on June 12, 1989, a notice was published (Volume 54, Number 111, page 24940), announcing two additional hearings in Texas and New Mexico and a 67-day comment period. A third additional public hearing on the SEIS is now scheduled to accommodate a request received by DOE from the State of Utah. The hearing will take place on July 6, 1989, at the Ogden Hotel, 247 24th Street, Ogden, Utah. It will begin at 9:00 a.m. and will continue, as needed, through the day and evening with recesses for meals. The public comment period on the draft SEIS has been extended to July 11, 1989.

Participation Procedures: To accommodate those interested in commenting on the draft SEIS, an additional public hearing is scheduled in

Ogden, UT on July 6, 1989, and the public comment period has been extended. Written comments should be mailed to the address below and postmarked by July 11, 1989. Persons wishing to preregister to make oral comments at the public hearings should call the DOE's WIPP SEIS Project Office at the phone number indicated below preferably one week prior to the hearing date. Commenters may also register at the door and will be accommodated as time allows.

ADDRESSES: Written comments should be directed to: W. John Arthur III, Project Manager, WIPP SEIS Project Office, U.S. Department of Energy, 6301 Indian School Road, NE, 7th Floor, Albuquerque, NM 87110. Those wishing to be placed on the list of preregistered oral commenters should call DOE's toll-free number 1-800-274-0585 and leave their name, phone number, and address with zip code.

FOR FURTHER INFORMATION CONTACT: W. John Arthur, III, WIPP SEIS Project Manager, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87110, (505) 889-3038.

Or

Carol Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-4600.

Dated in Washington, DC, this 21 day of June, 1989, for the U.S. Department of Energy.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-15144 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR Part 600.7(b) it intends to renew on a noncompetitive basis a grant to Jackson State University (JSU) as the lead institution on behalf of a consortium involving JSU, Ana G. Mendez Educational Foundation (AGMEF), and Lawrence Berkeley Laboratory of the University of California to improve the research and instructional programs in mathematics, natural science, and computer science at JSU and the three institutions of higher education which comprise the AGMEF—the University of Turabo,

Metropolitan University, and the Puerto Rico Junior College. The grant renewal is to be effective July 15, 1989. The estimated amount is \$1,332,330.

Procurement Request Number: 05-89ER75274.001.

Project Scope: The grant renewal is to continue a collaborative research and manpower development effort between JSU and AGMEF in response to Congressional direction included in the conference report on the Energy and Water Development Appropriation Act of 1989. Eligibility for this award is, therefore, restricted to JSU.

FOR FURTHER INFORMATION CONTACT: Luis E. Velazquez, Research Management Branch, Research and Waste Management Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831-8622, (615) 576-0731.

Issued in Oak Ridge, Tennessee, on June 6, 1989.

Robert E. Lynch,

Acting Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-15061 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-20-NG]

Brymore Energy, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada.

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an Order Granting Blanket Authorization To Export Natural Gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Brymore Energy Inc. (BEI) blanket authorization to export natural gas from the United States to Canada. The order issued in FE Docket No. 89-20-NG authorizes BEI to export up to 200 Bcf of gas for short-term and spot market sales over a two-year period beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15062 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[FE Docket No. 89-11-NG]

Canterra Natural Gas Inc.; Granting of Extension of Blanket Authorization to Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an Order Granting Extension of Blanket Authorization to Import Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Canterra Natural Gas Inc. (CNG), an extension of its existing blanket authorization to import natural gas from Canada. The order issued in FE Docket No. 89-11-NG authorizes CNG to import up to 50 Bcf of Canadian natural gas over a two-year period commencing August 14, 1989, through August 13, 1991, for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15063 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-20-NG]

Grand Valley to Import Natural Gas From Canada.

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 11, 1989, of an application filed by Grand Valley Gas Company (Grand Valley), a Utah State corporation, for blanket authorization to import up to 75 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery. The gas would be purchased from various Canadian sources on a short-term and

spot market basis to supply U.S. purchasers that are expected to include, but are not limited to, industrial and commercial end-users, agricultural users, electric utilities, pipelines and distribution companies. At the present time the applicant is involved in negotiations with a number of U.S. purchasers in the Pacific Northwest. Grand Valley intends to use existing pipeline facilities for transportation of the volumes to be imported and to file quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 26, 1989.

FOR FURTHER INFORMATION CONTACT:

Scott Styles, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7249.
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et. seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the Federal Register (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In

that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttal presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., July 26, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request

for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Section 590.316.

A copy of Grand Valley's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15064 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-32-NG]

Gulf Energy Marketing Co.; Application to Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 30, 1989, of an application filed by Gulf Energy Marketing Company (Gulf Energy), requesting blanket authorization to export up to 105 Bcf of natural gas from the United States to Mexico for short-term and spot market sales over a two-year period beginning on the date of first delivery. Gulf Energy intends to use existing pipeline facilities in Texas for transportation of the volumes to be exported and to file quarterly reports detailing each transaction.

The application is under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. **DATES:** Protests, motions to intervene, notices of intervention and written comments are invited. Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written

comments are to be filed no later than July 26, 1989.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Gulf Energy, a Delaware corporation with its principal place of business located in Houston, Texas, proposes to export domestically produced natural gas to Mexico for resale to purchasers in Mexico on an interruptible or firm basis for a term of two years beginning with the date of first delivery. Gulf Energy, a marketer of natural gas, states that authority would be used primarily to make sales to Petroleos Mexicanos (Pemex) for the local distribution by Pemex to residential and industrial users.

Gulf Energy states it plans to negotiate a sales contract with Pemex for up to 140 MMcf per day at a price that would be adjusted each month based on changes in the price of natural gas in the market. Because the applicant contemplates other sales, authorization is requested for 105 Bcf during the two-year period. Applicant states that sales transactions, including the final arrangement with Pemex, will be the product of arms-length negotiations, and the terms of each arrangement will reflect prevailing market conditions. Gulf Energy proposes using in connection with the Pemex transaction an interconnection between the pipeline facilities of Texas Eastern Transmission Corporation and Pemex near Reynosa, Tamaulipas, Mexico. An alternate delivery point would be at the point of interconnection of Valero Gas Transmission and Pemex near Piedros Negros, Mexico. Other existing interconnections may also be used for various transactions.

Gulf Energy requests that an authorization be granted on an expedited basis. A decision on Gulf Energy's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos.

0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial Parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the *Federal Register* (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments

must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., July 26, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, on trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Gulf Energy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1989.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89-15065 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-27-NG]

Ocean State Power and Ocean State Power II; Application to Amend Authorization to Import Natural Gas from Canada**AGENCY:** Department of Energy, Office of Fossil Energy.**ACTION:** Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 21, 1989, of a joint application filed by Ocean State Power (Ocean State) and Ocean State Power II (Ocean State II) to amend a previous order of the Economic Regulatory Administration (ERA) which authorized Ocean State to import 100,000 Mcf per day of natural gas from Canada over a 20-year period. By this application, Ocean State intends to reduce by one-half the volumes of gas that it would import and Ocean State II seeks authority to import 50,000 Mcf of Canadian gas per day in place of Ocean State.

On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204-127 specifies the transferred function (54 FR 11436, March 20, 1989).

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 26, 1989.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: On September 14, 1988, the ERA issued DOE/ERA Opinion and Order No. 243-A (Order 243-A) authorizing Ocean State, a Rhode Island partnership, to import from ProGas Limited (ProGas) up to 100,000 Mcf per day of gas over a 20-year period, beginning on the date of

first delivery, to fuel a new combined-cycle electrical generating plant in Burrillville, Rhode Island. (Ocean State, 1 ERA Para. 70,810). The plant is scheduled to begin operation in late 1989 and will comprise two 250-megawatt combined-cycle units, to be constructed sequentially. The imported gas would enter the U.S. near Niagara Falls, New York, and be transported to Rhode Island by Tennessee Gas Pipeline Company.

In Order 243, the ERA found that the proposed import, which would be made under a market-responsive gas purchase contract containing flexible price adjustment terms and no take-or-pay requirement, meets the DOE guidelines concerning competitiveness, need for the supply and security of supply, and is consistent with the public interest. In addition, the ERA determined that the import authorization would have limited environmental impacts and would be environmentally acceptable.

At the time Order 243-A was issued, Ocean State planned to construct, own, and operate both combined-cycle units. Ocean State is currently planning to develop only the first unit which will utilize 50,000 Mcf of gas per day. To facilitate financing of the project, Ocean State II was formed to develop the second unit. Ocean State II is a separate Rhode Island partnership comprised of companies which are affiliates of the partners in Ocean State. In view of the changed circumstances, Ocean State now requests that its existing authorization be amended to reduce by 50,000 Mcf the maximum daily volume of gas that it will import. In addition, Ocean State II requests authorization to import from Canada for the second unit up to 25,000 Mcf per day of the volumes that ProGas originally committed to supply to Ocean State when both units are operational and 25,000 Mcf per day of gas from TransCanada PipeLines Limited (TransCanada).

Ocean State filed with this application a new gas purchase agreement entered into with ProGas dated December 14, 1988, to supply 50,000 Mcf per day over a 20-year period for the first combined-cycle unit which replaces their original contract. Ocean State II also filed two precedent agreements and gas purchase contracts entered into with ProGas and TransCanada, dated July 14, and August 19, 1988, respectively, whereby each supplier would deliver 25,000 Mcf per day over a 20-year period for the second combined-cycle unit. According to the applicants, all three agreements contain substantially the same terms as Ocean State's original agreement with ProGas upon which Order 243-A was based, including pricing, volume adjustment,

renegotiation provisions, and delivery point. The primary exception is a provision in the agreement between Ocean State II and ProGas that stipulates that if ProGas is unable to meet its sales obligations to Ocean State II, Ocean State II may substitute third-party supplies for ProGas' volumes.

To provide assurance to Ocean State and Ocean State II that ProGas and TransCanada will meet their gas supply obligations, the parties have also entered into a backstop agreement. The backstop agreement provides that if ProGas is unable to supply gas as required under its purchase contracts with Ocean State and Ocean State II, TransCanada will make up the deficiency, and vice versa.

This joint application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. Based on the application, the only changes in the import arrangement previously authorized by the ERA in Order 243-A is the proposed replacement of Ocean State II for Ocean State as the authorized importer of one-half of the Canadian gas and the substitution of TransCanada as the supplier for one-quarter of the total volumes. The contractual terms under which the gas would be supplied are substantially the same and the quantity imported would not alter. Accordingly, the competitiveness of the import arrangements, need, and security of supply are not expected to be issues in this proceeding.

Nevertheless, the application raises one new element which bears on the competitiveness of Ocean State II's import arrangement. In particular, the contract between Ocean State II and ProGas provides that if ProGas is unable to meet its sales obligations, Ocean State II may arrange for purchases of gas from third-party suppliers. Should those supplies come from foreign sources, Ocean State II is essentially asking for the DOE to pre-approve imports without advance identification of the supplier or the details of any specific import transaction. While such authorizations to import gas where no sales contracts have been negotiated are routinely granted under DOE's blanket import program and are limited to two years, it is conceivable that a substitute import arrangement contemplated by Ocean State II may involve more than two years. Further, there would be no assurance to DOE that the underlying contracts would be sufficiently flexible to respond to changes in market conditions.

Accordingly, all parties should be aware that if this joint application is approved, the DOE will require Ocean State II to file a separate application for import authority for any sale and purchase of imported gas involving a substitute supplier for ProGas which is over two years. This condition on the authorization would ensure that Ocean State II has sufficient supplies of gas to operate its cogeneration facility while at the same time allowing the DOE to meet its section 3 responsibilities.

NEPA Compliance

In conjunction with Order 234-A, the ERA issued on September 14, 1988 (53 FR 36483, September 20, 1988), a Record of Decision, pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of the National Environmental Policy Act of 1969 (NEPA) and the DOE's guidelines for compliance with NEPA (52 FR 47662, December 15, 1987). The ERA relied on the *Ocean State Power Project Final Environmental Impact Statement (FEIS)* issued by the Federal Energy Regulatory Commission (FERC) on July 11, 1988 (FERC/EIS-0050), in assessing the environmental effects of granting the import. The FEIS which was adopted by the DOE (DOE/EIS-0140) examined the impacts of constructing both the cogeneration facility and Tennessee's additional transmission facilities needed to supply the imported gas. The ERA determined that the environmental impacts of constructing and operating both the power plant and the proposed Tennessee gas pipeline facilities would be environmentally acceptable. The environmental impacts of authorizing this import are no different than those associated with the earlier grant of import authority to Ocean State. Since the facilities identified in this application have previously been assessed in the ERA's September 14, 1988, Record of Decision, the DOE expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments

received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., July 26, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Ocean State and Ocean State II's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 9, 1989.
J. Allen Wampler,
Assistant Secretary, Fossil Energy.
[FR Doc. 89-15066 Filed 6-23-89; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 89-18-NG]

Texas International Gas & Oil Co.; Order Granting Authorization to Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Texas International Gas & Oil Company (TI) authorization to export natural gas from the United States to Mexico. The order issued in FE Docket No. 89-18-NG authorizes TI to export up to 22 Bcf of domestic gas over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, June 19, 1989.
J. Allen Wampler,
Assistant Secretary, Fossil Energy.
[FR Doc. 89-15067 Filed 6-23-89; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 89-28-NG]

Western Energy, Inc.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 28, 1989, of an application filed by Western Energy, Inc. (WEI), requesting blanket authorization to export up to 54.75 Bcf of natural gas from the United States to Mexico for short-term and spot market sales over a two-year period beginning on the date of the first delivery. WEI intends to export this gas by means of the existing transmission facilities of

Western Gas Interstate Company connecting with the facilities of Petroleos Mexicanos (Pemex) near El Paso, Texas. WEI also proposes to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 26, 1989.

FOR FURTHER INFORMATION:

William C. Daroff, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9516

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: WEI, a Colorado corporation with its principal place of business in El Paso, Texas, is a marketer of natural gas, light hydrocarbons and gaseous petroleum chemicals. In a letter dated May 2, 1989, WEI amended its original application, changing the term of the proposed export from two and one-half to two years.

WEI indicates that the requested authority would be used primarily, and perhaps exclusively, to make sales to Pemex, Mexico's national energy company, for distribution by Pemex to industrial and residential consumers in the city of Juarez, Mexico. The applicant states that it is currently negotiating a contract with Pemex for up to 60,000 Mcf per day at prices based on supplies of gas in the spot market. To the extent there are purchasers other than Pemex, the specific terms of each export arrangement, including the price, volume, and duration will be negotiated in response to market conditions. According to WEI, all of the gas exported would be purchased from natural gas producers in the States of Texas and New Mexico.

In support of its application, WEI asserts that the proposed export is in the public interest because the terms of each sale will be freely negotiated, thus ensuring that the arrangement will be competitive while providing an efficient allocation of natural gas in the market place.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, the domestic need for the gas will be considered, and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested export authority.

WEI requests that an authorization be granted on an expedited basis. A decision on WEI's request for expedite of treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the *Federal Register* (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be

taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., July 26, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of WEI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15068 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-13-NG]**Wisconsin Public Service Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada**

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Wisconsin Public Service Corporation (WPSC) authorization to import natural gas from Canada to the United States. The order issued in FE Docket No. 89-13-NG authorizes WPSC to import up to 25.55 Bcf of gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays.

Issued in Washington, DC, June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15069 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER89-483-000]

Alamito Co.; Filing

June 19, 1989.

Take notice that on May 30, 1989, Alamito Company tendered for filing a letter formally changing its name to Century Power Corporation. The letter states that this action reflects only a corporate name change and has no effect at all on the company's rights, obligations or positions as expressed in any pleading, rate schedule or other document on file with the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14947 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-654-023 and CP86-480-004]

Algonquin Gas Transmission Co.; Tariff Filing

June 19, 1989.

Take notice that on June 8, 1989, Algonquin Gas Transmission Company (Algonquin) filed certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin states that this filing is in compliance with the Commission orders of August 15, 1985 and July 2, 1987. Algonquin states that the purpose of this filing is to reflect in its rates to be effective November 1, 1987 the actual per book costs for the required facility construction necessary to provide full firm service deliveries of 73,696 MMBtu per day, under Rate Schedule F-4, as of November 1, 1987.

Algonquin states that it is reducing its currently effective Rate Schedule F-4 Demand Handling Charge effective November 1, 1987 by \$6.031 per MMBtu of Demand from \$22.756 to \$16.725. Algonquin states that it waited until this time to file the cost of service related to the F-4 facilities "because it was necessary to use the settlement rate of returns, income tax rate and depreciation rate included in the Commission's final orders in Docket Nos. RP86-41 and RP87-14." Algonquin states that all monies overcollected by Algonquin under its Rate Schedules F-4 for the period commencing November 1, 1987 will be refunded (including interest) to its customers by a credit to the next month's billing following Commission acceptance of this filing.

Algonquin states that this filing revises its rate under Rate Schedule AFT-1 to conform the F-4 rate which is included on Rate Schedule AFT-1 to the F-4 rate of \$16.725 as proposed in this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211

(1988)). All such protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14948 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-24-002]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

June 19, 1989.

Take notice that Equitrans, Inc. (Equitrans) on June 15, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1989.

Substitute Eighth Revised Sheet No. 10
Substitute Seventh Revised Sheet No. 14
Substitute Second Revised Sheet No. 34
Second Revised Sheet No. 172

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued on May 31, 1989 in Docket No. TQ89-3-24-000. The Order directed Equitrans to refile its Quarterly Purchased Gas Cost Adjustment tariff sheets along with tariff sheet No. 172 to be effective June 1, 1989 to reflect the revised pipeline supplier rates in effect on June 1, 1989.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86-676-000.

Any person desiring to protest said filing should file a motion to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission

and are available for public inspection. All such protests should be filed on or before June 26, 1989.

Lois D. Cashell,
Secretary.

[FR Doc. 89-14949 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-7-4-001]

**Granite State Gas Transmission, Inc.;
Proposed Change in Rates**

June 19, 1989.

Take notice that on June 15, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing Substitute Nineteenth Revised Sheet No. 8 in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on May 1, 1989.

According to Granite State, it filed a change in the Injection Charge in its Rate Schedule GSS on May 30, 1989 to track a change proposed by CNG Transmission Corporation (CNG) in its Rate Schedule GSS in a filing in Docket No. RP89-124-000. Granite State further states that CNG made a compliance filing in Docket No. RP89-124-000 pursuant to a Commission order issued April 28, 1989 changing the Injection Charge that Granite State has tracked in its May 30, 1989 filing. According to Granite State, the Injection Charge in its Rate Schedule GSS on Substitute Nineteenth Revised Sheet No. 8 tracks the change made by CNG in its compliance filing.

According to Granite State, copies of its filing were served upon Bay State Gas Company and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 26, 1989. Protests will be considered by the Commission, in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-14950 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-8-4-000]

**Granite State Gas Transmission, Inc.;
Filing**

June 19, 1989.

Take notice that on June 14, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on July 1, 1989:

Second Revised Sheet No. 7-C

According to Granite State, the purpose of the instant filing is to comply with the Commission's order issued September 28, 1988 in Docket No. RP88-242-000 relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State proposes to track Tennessee's revised take-or-pay charges filed on May 31, 1989 in Docket No. RP88-191.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-14951 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-29-005 and RP88-228-020]

Tennessee Gas Pipeline Co. Filing

June 19, 1989.

Take notice that on June 14, 1989, Tennessee Gas Pipeline Company

(Tennessee) filed the following Pro Forma tariff sheets:

Pro Forma Sheet No. 50A
Pro Forma Sheet No. 51
Pro Forma Sheet No. 56
Pro Forma Sheet No. 58B
Pro Forma Sheet No. 115A

Tennessee states that it is filing these sheets in compliance with the Commission's May 31, 1989 Letter Order in the referenced proceeding. Tennessee states that the Pro Forma sheets provide that Tennessee will authorize takes in excess of a firm transportation or firm sales customer's Demand 2 nomination (i) if the customer has made a request at least five business days prior to the date the customer commences taking the excess quantities and (ii) provided that the excess takes will not adversely affect Tennessee's other firm services or system operations.

Tennessee states that it is filing Pro Forma tariff sheets because a Demand 2 nomination procedure has not been placed into effect by Tennessee. By order issued May 24, 1989 in Docket Nos. RP88-228-012, et al., the Commission accepted an Interim Stipulation and Agreement dated March 9, 1989 which provides that Tennessee's rate and billing determinants for an interim period February 1, 1989 to November 1, 1989 shall not reflect Demand 2 nominations. Tennessee may elect to place rates in effect at the end of the interim period which reflect Demand 2 nominations of its customers. At that time, Tennessee will file the Pro Forma tariff sheets attached hereto as part of its FERC Gas Tariff.

Tennessee respectfully requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protest should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14952 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-92-017 and RP85-209-023]

United Gas Pipe Line Co.; Filing of Tariff Sheets

June 19, 1989.

Take notice that on June 15, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251-1478, filed in Docket No. RP88-92 updated tariff sheets to implement the Motion Rates.

United states that the tariff sheets reflect rates and charges equal to the Base Tariff Rates originally moved into effect by United on September 30, 1988 and accepted by the Commission on December 8, 1988. United also states that the maximum time period provided for under the Interim and Base Settlements for the Interim Settlement Rates will expire on or about June 19, 1989, and therefore, effective as of June 20, 1989, United will commence charging and collecting the "Motion Rates" which were allowed to become effective by the December 8, 1988 Commission Order. It is further stated that commencement of the Motion Rates should not be interpreted as a withdrawal of the Base Settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in such accordance with § 385.214 and 385.211 of the Commissions Rules of Practice and Procedure. All such motions or protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14953 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-195-000, RP89-140-003]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 19, 1989.

Take notice that on June 14, 1989, Williams Natural Gas Company (WNG) submitted the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Substitute Revised Eleventh Revised Sheet No. 6

Second Revised Original Sheet No. 6E
Revised Substitute Tenth Revised Sheet No. 7

Second Revised Third Revised Sheet Nos. 31 and 38

Second Revised Original Sheet Nos. 113-115

This filing is identical to the filing made in RP89-140-003 on May 30, 1989 except that Docket No. RP89-195-000 has been added to the caption.

WNG states that these tariff sheets are filed in compliance with Commission order issued April 28, 1989 in Docket No. RP89-140-000 and 001.

WNG states that it made revisions to its tariff language and reduced the settlement costs by \$2.2 million after computing the 25% to be absorbed by WNG to comply with Paragraph (C).

WNG states that it is submitting supporting documentation in compliance with Paragraph (D) and a list of all contracts in litigation on March 31, 1989 in compliance with Ordering Paragraph (E).

WNG states that pursuant to Art. 29.2(b) of the General terms and Conditions, it included an additional \$4,380,000 in Settlement Costs concerning disputes which were in litigation on March 31, 1989, but which have been subsequently settled with payments made by the Company.

WNG states that proprietary material related to its Settlements with producers has been included in a non-public copy filed with the Commission and the sensitive material has been deleted from the public copies of the filing which have been mailed to WNG's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 26, 1989. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14954 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00100; FRL-3607-9]

Biotechnology Science Advisory Committee; Subcommittee on Mobile Genetic Elements; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Mobile Genetic Elements. The meeting will be open to the public. The Subcommittee will discuss transposon and plasmid transfer from donor bacteria to recipient bacteria in the environment. The discussion will focus on the likelihood of, and techniques for estimation of such movements.

DATE: The meeting will be held on Thursday, July 20, 1989, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Embassy Suites Hotel, 1300 Jefferson Davis Highway, Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: June 15, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-15058 Filed 6-23-89; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board

[FRL-3607-8]

Environmental Engineering Committee; Open Meeting—July 13-14, 1989

Under Pub. L. 92-463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee (EEC), will meet July 13-14, 1989 in the Large Conference Room, 10th Floor, Earnest J. Cockrell Hall, University of Texas; Austin, Texas 78712-1076. The meeting will begin at 9:00 a.m. on Thursday, and Friday, and adjourn no later than 5:00 p.m.

The purpose of the meeting is to review several draft reports, discuss progress on on-going projects and to plan the Fiscal 1990 meeting schedule of the EEC. The draft reports include the SAB comments on EPA's draft pollution prevention research plan report to Congress, the Saturated Zone Model for surface impoundments, and the sludge incineration report. Other topics include the following as time permits: a recap of toxics treatability research-in-progress review conducted by the Toxics Treatability Subcommittee on June 22-23, 1989 in Cincinnati, Ohio; discussion of an upcoming review of the EPA's municipal waste combustion ash solidification/stabilization research program; discussion of generic leachability and the TCLP (Toxicity Characteristic Leaching Procedure), asbestos engineering research, risk reduction strategies effort of the SAB, and soils cleanup model.

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board (A101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by July 7, 1989. Seating at the meeting will be on a first come basis.

Date: June 16, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-15059 Filed 6-23-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION**Clearinghouse Advisory Panel; Renewal of Charter**

SUMMARY: The National Clearinghouse on Election Administration announces the renewal of the charter for the Clearinghouse Advisory Panel.

The purpose of the Panel is to provide advice and consultation to the Clearinghouse with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT:

Jane McKee, National Clearinghouse on Election Administration, Washington, DC 20463. (202) 376-5670.

Date: June 20, 1989.

Penelope Bonsall,

Director, National Clearinghouse on Election Administration.

[FR Doc. 89-14997 Filed 6-23-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-832-DR]

Amendment to Notice of a Major Disaster Declaration; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-832-DR), dated June 7, 1989, and related determinations.

DATED: June 14, 1989.

FOR FURTHER INFORMATION CONTACT:

Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective June 10, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-15008 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-826-DR]

Amendment to Notice of a Major Disaster Declaration; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-826-DR), dated May 10, 1989, and related determinations.

DATED: June 12, 1989.

FOR FURTHER INFORMATION CONTACT:

Neva K. Elliott, Disaster Assistance Programs, Federal Emergency

Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Alaska dated May 10, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1989.

The communities of Akiachak, Alakanuk, Allakaket, Anvik, Arctic Village, Beaver, Chignik, Eagle Village, Ekwo, Ester, Fort Yukon, Gamble, Golovin, Grayling, Karluk, Kokhanok, Kongiganek, Koyukuk, Lower Kalskag, Levelock, Manokotak, Minto, New Stuyahok, St. Michael, Tattilek, Togiak, Tununak, and Venetie for Public Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 89-15019 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-833-DR]

Major Disaster and Related Determinations; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-833-DR), dated June 16, 1989, and related determinations.

DATED: June 16, 1989.

FOR FURTHER INFORMATION CONTACT:

Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated June 16, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq., Public Law 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from severe thunderstorms and tornadoes on June 7-8, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts

as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288, as amended by PL 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of East Baton Rouge, Iberville, Livingston, St. Helena, Vernon, and West Baton Rouge for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718-02.)

Julius W. Becton, Jr.

Director, Federal Emergency Management Agency.

[FR Doc. 89-15007 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-828-DR]

Amendment to Notice of A major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the announcement closing the incident period for this disaster on June 7, 1989, is rescinded. The incident period for this

disaster will continue as beginning on May 4, 1989, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718-02.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-15009 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-1585]

Release of Thrift Financial Data; Federal Savings & Loan Insurance Corp.

Date: June 13, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is announcing that it will be making available to the general public a significant amount of additional data on the operations of individual institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC-insured thrift institutions") in response to standard requests for such information. The Board is also requesting comments on methods to improve data collection for interest rate risk measurement. The Board has reviewed its policy regarding data release and is taking this action to ensure that the public is kept adequately informed.

DATE: Comments must be received on or before July 26, 1989.

ADDRESS: Please send comments and letters to the: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, Washington, DC 20552.

Comment letters will be available for inspection at 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard C. Pickering, Deputy Director, Office of Policy and Economic Research, (202) 906-6770, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board announces that beginning with the release of information covering the first quarter of 1989 (scheduled for early June), it will begin making available to the general public a significant amount of additional data on the operations of individual FSLIC-insured thrift

institutions in response to standard requests for such information. In addition, it will make available monthly data on the activity of these institutions in twelve-month blocks in August of each year.

The Board will also make available in June aggregates of information reported by thrift institutions on the amount and yield/cost of financial assets and liabilities classified by remaining time to maturity or repricing. Beginning with the March 1990 data collection, the Board will release the data (Section H of the Thrift Financial Report) for individual thrift institutions.

The Board has been collecting this data since 1984 as a means of measuring the interest rate risk exposure of thrift institutions. This information, together with certain assumptions regarding mortgage loan prepayment rates, is used to measure the sensitivity of thrift institution earnings and net asset values to changes in market interest rates. The Board recognizes, however, that such measurement may be imprecise because of the level of aggregation and simplification required to make it feasible for institutions of all types to report such information.

Because the measurement of interest rate risk exposure is essential to the assessment of a thrift institution's safety and soundness, the Board has developed a comprehensive interest rate risk program encompassing guidance on prudent interest rate risk policies and procedures (Thrift Bulletin 13) and the integration of interest rate risk exposure in the Board's risk-based capital proposal. The measurement of interest rate risk is a critical component of this program.

Because of the importance of interest rate risk measurement and the limitations on that measurement imposed by data aggregation, the Board is requesting comment on methods to improve data collection for interest rate risk measurement. The enhancements to Section H effective June 1989 have extended the range of data available to the Board. Further enhancements may be warranted and the Board is soliciting comment for all interested parties on recommendations for such enhancements.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14945 Filed 6-23-89; 8:45 am]

BILLING CODE 6720-01-M

[No. 89-1569]

Power of Receiver and Conduct of Receiverships; Repurchase Agreements; Western Savings and Loan Association

Date: June 14, 1989.

AGENCY: Federal Home Loan Bank Board.**ACTION:** Notice.

SUMMARY: The Federal Home Loan Bank Board is supplementing an earlier resolution concerning Western Savings and Loan Association, Phoenix, Arizona ("Western"), to provide that the protections afforded to certain persons and entities engaged in repurchase agreements ("repos") with Western will be afforded to such persons or entities engaged in similar transactions with Western Savings and Loan Association, F.A., Phoenix, Arizona to which such repos were transferred by the Federal Savings and Loan Insurance Corporation as receiver for Western.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 906-6248; or Jody Kresch, Attorney, Office of General Counsel, (202) 906-7204; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas: The Federal Home Loan Bank Board ("Board"), by its Resolution No. 89-1553, dated June 14, 1989, appointed the Federal Savings and Loan Insurance Corporation ("Corporation") as receiver ("Receiver") for Western Savings and Loan Association, Phoenix, Arizona, ("Western") and pursuant to an Acquisition Agreement, dated June 14, 1989, between the Receiver and Western Savings and Loan Association, F.A., Phoenix, Arizona ("New Federal"), the Receiver transferred certain assets and liabilities, including repurchase agreements ("repos"), of Western to New Federal, all as more fully set forth in such Acquisition Agreement; and

Whereas: The Board has previously adopted Resolution No. 88-1575, dated December 29, 1988 and Resolution No. 89-103, dated February 2, 1989, regarding repos ("Repo Resolutions"); and

Whereas: The Board desires to supplement the Repo Resolutions (which supplementation the Board does not consider to be an amendment or rescission of such Resolution) to take into account the transfer of certain of Western's assets and liabilities to New

Federal and to provide the same protections and commitments to counterparties to Repos with New Federal.

Now, therefore, the Board resolves as follows:

1. All references in the Repo Resolutions to "Western" shall also be references to New Federal.
2. This resolution shall be effective immediately upon its adoption by the Board.
3. The Secretary of the Board shall forward this resolution for publication in the Federal Register.

By the Federal Home Loan Bank Board.

John F. Chizzoni,

Assistant Secretary.

[FR Doc. 89-14946 Filed 6-23-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM**Review of Revenue Limit on Securities Underwriting Subsidiaries**

The Board is considering whether to increase from 5 to 10 percent the revenue limit established by the Board in its Section 20 Orders authorizing bank holding company subsidiaries to underwrite and deal in bank-ineligible securities. See, e.g., *Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473, 485 (1987), *affirmed sub nom. Securities Industry Association v. Board of Governors of the Federal Reserve System/Citicorp, J.P. Morgan & Co. Incorporated, Bankers Trust New York Corporation*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S.Ct. 2830 (1988). See also *Securities Industry Association v. Board of Governors of the Federal Reserve System/The Chase Manhattan Corporation*, 847 F.2d 890 (D.C. Cir. 1988).

In those Orders, the Board determined that a bank holding company subsidiary would not be "engaged principally" in securities underwriting activity in violation of section 20 of the Glass-Steagall Act (12 U.S.C. 377), if the subsidiary's gross revenue from bank-ineligible underwriting and dealing did not exceed a range of between 5 and 10 percent of its total gross revenues. Initially, the Board established a 5 percent limit on the amount of revenues received by a section 20 subsidiary from bank-ineligible activity for the first year of operation.

The Board stated that it would review after one year of operation under the Orders whether to increase the limit to 10 percent. In this connection, a number of bank holding companies have filed

requests for an increase of the revenue limit to the 10 percent level.

Any comments regarding this matter should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 20, 1989.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14990 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Request for Modification of Restriction on Section 20 Subsidiaries' Underwriting of Asset-Backed Securities of Affiliates

The Board is considering whether to modify a provision in the Board's Section 20 Orders which prohibits securities subsidiaries of bank holding companies from underwriting or dealing in bank-ineligible securities issued by affiliates or representing interests in, or secured by, obligations originated or sponsored by affiliates ("affiliate securities"). This restriction was established by the Board in its initial Orders under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) authorizing the establishment of subsidiaries that underwrite and deal in bank-ineligible securities to a limited extent consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). The prohibition was adopted by the Board as a precautionary measure to address the Board's specific concern that a Section 20 subsidiary might be tempted to securitize the affiliates' least creditworthy assets. See, e.g., *Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473, 499, 504 (1987).

Subsequent to the Board's initial Orders, the U.S. Senate and Committees of the U.S. House of Representatives voted in favor of legislation to permit bank holding company subsidiaries to underwrite and deal in affiliate securities that are: (1) Rated by an unaffiliated, nationally recognized rating organization, or (2) issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association, or represent interests in such obligations.¹ The Board has

¹ S. 1886, section 102, 100th Cong., 2d Sess. (1988); H.R. 5094, section 201, 100th Cong., 2d Sess. (1988).

received requests from bank holding companies to modify the prohibition on underwriting affiliate securities to permit such underwriting and dealing if the requirements listed above are met.

In approving the initial establishment of section 20 subsidiaries, the Board stated it would review the continued appropriateness of the limitations established initially, and reserved the right to amplify or modify them from time to time as the Board deems necessary to ensure the standards of the Bank Holding Company Act are met. The Board requests comment on whether replacing the existing prohibition on underwriting affiliate obligations with a test based on the above-stated requirements would be appropriate to address the Board's concern.

Any comments regarding the requested relief should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 20, 1989.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14989 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

General Educational Fund, Inc., et al.; Applications To Engage in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-12407) published at page 22488 of the issue for Wednesday, May 24, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Colorado National Bankshares, Inc. is amended to read as follows:

1. *Colorado National Bankshares, Inc.*, Denver Colorado; to engage *de novo* through its subsidiary, Colorado National Life Insurance Company, Inc., Denver, Colorado, in credit-related insurance underwriting (reinsurance) activities directly related to an extension of credit by the bank holding company or any of its subsidiaries, and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Comments on this application must be received by July 7, 1989.

Board of Governors of the Federal Reserve System, June 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 89-14981 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Commercial Bancshares of Roanoke, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Commercial Bancshares of Roanoke, Inc.*, Roanoke, Alabama; to engage *de novo* through its subsidiary,

Commercial Bancshares Services, Inc., Roanoke, Alabama, in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. Applicant's customers will be limited to financial institutions and Applicant will provide software applications and systems for certain financial institution back room data processing operations.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Otto Bremer Foundation and Bremer Financial Corporation*, St. Paul, Minnesota; to engage *de novo* in making and servicing loans to the Bremer Financial Corporation Employee Stock Ownership Plan & Trust (the "ESOP") pursuant to § 225.25(b)(1) of the Board's Regulation Y. The loans will be made for the following purposes: (1) To enable the ESOP to purchase shares of capital stock of and only of the Applicant; and (2) to enable the ESOP to refinance any existing indebtedness or future indebtedness incurred by the ESOP.

Comments on this application must be received by July 10, 1989.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14983 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Merchant House; Formation of, Acquisition by, or Merger of Bank Holding Companies; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-10651) published at page 19237 of the issue for Thursday, May 4, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for Merchant House is amended to read as follows:

1. *Merchant House*, Santa Ana, California; to become a bank holding company by acquiring 52.60 percent of the voting shares of PNB Financial Group, Inc., Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

Comments on this application must be received by July 7, 1989.

Board of Governors of the Federal Reserve System, June 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14982 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

OnBancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 12, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *OnBancorp, Inc.*, Syracuse, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Onondaga Savings Bank, Syracuse, New York, which operates a savings bank life insurance department in conformity with New York Law. It also has a subsidiary engaged in insurance agency activities beyond those permissible for bank holding companies, which it has committed to divest within two years of consummation.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation*, Cleveland, Ohio; to acquire 100 percent of the voting shares of Crestwood Banking Company, Ltd., Crestwood, Kentucky, and thereby indirectly acquire Crestwood State Bank, Crestwood, Kentucky.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690.

1. *Dental Bancorporation*, Victor, Iowa; to acquire 20 percent of the voting

shares of Colfax Bancshares, Inc., Colfax, Iowa, and thereby indirectly acquire First National Bank in Colfax, Colfax, Iowa.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Cedar Vale Bank Holding Company*, Wellington, Kansas; to become a bank holding company by merging with Sumner County Bancshares, Inc., Wellington, Kansas, and thereby indirectly acquire Bank of Commerce and Trust Company Wellington, Kansas, which engages as agent in the sale of credit-related and accident and health insurance only to assure repayment of the outstanding balance due on a specific extension of credit by the bank by the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14984 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *J.C. (Jesse) Palmer, III*, Waynesboro, Georgia; to retain 1.37 percent, and to acquire an additional 8.04 percent of the voting shares of First Burke Banking Company, Waynesboro, Georgia, for a total of 35.09 percent, and thereby indirectly acquire The First National Bank of Waynesboro, Waynesboro, Georgia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *French E. Hickman, D.D.S.*, Oklahoma City, Oklahoma, to acquire individually an additional 14.39 percent for a total of 34.85 percent and through French E. Hickman, D.D.S., Inc., Retirement Plan, Oklahoma City, Oklahoma, 4.97 percent for a total acquisition of 39.82 percent; Jack R. Matherly, McCloud, Oklahoma, to acquire an additional 40.19 percent and through Matherly Mechanical Contractors, Inc., 2.67 percent for a total of 52.13 percent of the voting shares of Harrah National Bancshares, Inc., Harrah, Oklahoma, and thereby indirectly acquire The National Bank of Harrah, Harrah, Oklahoma.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Victor S. Morhaim*, Northridge, California; to acquire up to an additional 9.50 percent of the voting shares of BNB Bancorp, Burbank, California, and thereby indirectly acquire Burbank National Bank, Burbank, California.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14985 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

South Banking Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of

a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 14, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *South Banking Company*, Alma, Georgia; to merge with Georgia Peoples Bankshares, Inc., Baxley, Georgia, and thereby indirectly acquire Peoples State Bank & Trust Company, Baxley, Georgia.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-14986 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Wachusett Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 13, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Wachusett Bancorp, Inc.*, Clinton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Clinton Savings Bank, Clinton, Massachusetts,

which engages in the sale of Massachusetts Savings Bank Life Insurance.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Cen-La Bancshares, Inc.*, Marksville, Louisiana; to retain 5.59 percent of the voting shares of Union Bancshares, Inc., Marksville, Louisiana, and thereby indirectly acquire Union Bank, Marksville, Louisiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Wilkinson Banking Corporation*, Greenwood, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Farmers Bank, Greenwood, Arkansas, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by Farmers Bank. Farmers Bank, located in a town with a population not exceeding 5,000, also engages in the sale of a line of life insurance products not related to credit extensions by the bank, including universal, term and decreasing term life insurance and annuity contracts. It engages in no underwriting activities.

Board of Governors of the Federal Reserve System, June 19, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-14987 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), July 20-21, 1989, Building 31, Conference Room 9, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on July 21, from 8:30 a.m. to 12:00 noon to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 20, from 8:30 a.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Acting Information Officer, Division of Research Resources, National Institutes of Health, Westwood Building, Room 857, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Lawrence J. Alfred, Executive Secretary, (301) 496-4390, will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support, National Institutes of Health.)

Dated: June 19, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 89-15048 Filed 6-23-89; 8:45 am]

BILLING CODE 4140-01-M

Meeting of Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 24-25, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on July 24 from 9 a.m. to approximately 2 p.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 24, from 2 p.m. to adjournment on July 25, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Carol Shreffler or Donald McRee, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919-541-7826), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: June 19, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-15049 Filed 6-23-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Secretary's Council on Health Promotion and Disease Prevention; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Thursday, July 13, 1989.

Name: Secretary's Council on Health Promotion and Disease Prevention

Date and Time: July 13, 1989, 8:30 a.m. to 4:00 p.m.

Place: Room 5051, Cohen Building, 330 Independence Avenue, SW., Washington, DC.

Open July 13, 1989, 8:30 a.m. to Noon. Closed from Noon to 1:30 p.m. for a working lunch.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion.

Agenda: This will be the fourth meeting of the Secretary's Council. The Council will hear briefings on PHS prevention activities. They will hear council subcommittee reports including the progress of the Year 2000 Health Objectives, community health and minority health.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Linda M. Harris, Ph.D., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472-5370.

Agenda items are subject to change as priorities dictate.

Date: June 16, 1989.

James A. Harrell,

Acting Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 89-14944 Filed 6-23-89; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Redelegation of Authority to Sign Enumeration at Birth Agreements

Section 137 of Pub. L. 92-603 (the Social Security Amendments of 1972) amended section 205(c)(2) of the Social Security Act, as amended, by adding subparagraph (B) to section 205(c)(2). Among other things, this subparagraph confers upon the Secretary of Health and Human Services (the Secretary) authority to take affirmative measures to assure the assignment of Social Security numbers (SSNs), at the request of the parents or guardians, to or on behalf of children who are below school age. This section of the Social Security Act also provides that the Secretary shall require applicants for SSNs to furnish the evidence necessary to establish their age, U.S. citizenship or alien status, and true identity.

Current Social Security Administration (SSA) regulations at 20 CFR 422.103 provide that an individual may apply for an SSN by filing a signed Form SS-5 "Application for Social Security Number Card," and by submitting evidence of age, identity, and U.S. citizenship or alien status, as described in 20 CFR 422.107. Under these current rules, a U.S. birth certificate is generally accepted as evidence of age, as evidence of identity for a child under 7 years of age, and as evidence of U.S. citizenship.

Section 1524 of Pub. L. 99-514 (the Tax Reform Act of 1986), which is applicable to tax returns due after December 31, 1987, requires that a taxpayer who claims an exemption for a dependent must provide the taxpayer identification number of the dependent, if the dependent is age 5 or older. This is usually an SSN.

Under Pub. L. 100-485 (the Family Support Act of 1988), a taxpayer must

provide a taxpayer number for dependents age 2 or older on tax returns due after December 31, 1989. This will generally be an SSN.

Because of the growing need for persons to obtain SSNs at an early age, in 1987 SSA initiated pilot projects in three States to test the feasibility of assigning an SSN to a newborn child, based on a parent's request, as part of the State's birth registration process. This was well received by the new parents, pilot States and participating hospitals. Based on the success of the pilot projects, we are asking the other States, including, for the purpose of this service, the District of Columbia, Puerto Rico, Guam, and New York City, to enter into agreements (enumeration at birth agreements) with us to make this service available nationally. We do not plan to extend this service to any other U.S. territories or possessions because of the relatively small number of births and requests for SSNs in those places.

Notice is hereby given that the Commissioner of Social Security (the Commissioner) has redelegated authority to sign enumeration at birth agreements to SSA's Deputy Commissioner for Policy and External Affairs and Associate Commissioner for Policy. This redelegation is made pursuant to authority under section 205(c)(2)(B) of the Social Security Act, as amended, delegated by the Secretary to the Commissioner, with authority to redelegate (33 FR 5836-37, dated April 16, 1968). The Commissioner's redelegation is effective on the date that it is published in the **Federal Register**. I affirm and ratify any actions taken by the Deputy Commissioner for Policy and External Affairs and the Associate Commissioner for Policy which may constitute the exercise of this authority after September 7, 1988 and before the date that this redelegation is published in the **Federal Register**. Further redelegations by these delegates are not authorized.

Dated: June 12, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 89-15028 Filed 6-23-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bedrock Spring Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the Bedrock Spring Area of Critical Environmental Concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the Bedrock Spring ACEC as an area with significant cultural resources which require special management attention. The management plan presents actions which will protect and preserve those resources. The ACEC includes 800 acres within T. 28S, R. 41E; T. 28S, R. 42E; and T. 29S, R. 42E, MDM. Authorities for the management plan are 43 CFR 8000.0-6, 8341, 8342, 8364, and 8365; Federal Land Policy and Management Act of 1976; Archaeological Resources Protection Act of 1979; National Historic Preservation Act of 1966; and National Environmental Policy Act of 1970.

The development of the management plan included public involvement. The ACEC will remain open to uses which are compatible with the plan, protection, and preservation of the cultural resources. The plan recommends the following actions: close all routes and ways within the ACEC, except Route 1123 and another route to be designated, for the protection of cultural resources; post routes and ways with appropriate signs; fence or barricade closed routes and ways; prohibit camping within the ACEC; place signs at boundaries of the ACEC which inform the public of prohibitions and the importance of the cultural resources; develop maps of the cultural resource sites; develop a program for annual monitoring; implement regular surveillance by Resource Area Rangers; pursue excavation of the disturbed midden at sites within the ACEC.

EFFECTIVE DATE: Immediately.

ADDRESS: The management plan, including maps, environmental assessment, and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Avenue, Ridgecrest, CA 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION, CONTACT: Joan Oxendine at the above address or telephone (619) 375-7125.

Date: June 15, 1989.

H. W. Riecken,

Acting District Manager.

[FR Doc. 89-14961 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-40-M

Christmas Canyon Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the Christmas Canyon Area of Critical Environmental Concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the Christmas Canyon ACEC as an area with significant cultural resources which require special management attention. The management plan recommends actions for the protection and preservation of those cultural resources. The ACEC includes 7,540 acres of public land within T. 28S, R. 42E; T. 28S, R. 43E; and T. 27S, R. 43E, MDM. Authorities for the management plan are 43 CFR 8000.0-6, 8341, 8342, 8364, and 8365; Federal Land Policy and Management Act of 1976; Archaeological Resources Protection Act of 1979; National Historic Preservation Act of 1966; and National Environmental Policy Act of 1970.

The development of the management plan included public involvement. The ACEC will remain open to uses which are compatible with the plan, protection, and preservation of cultural resources. The plan recommends the following actions: authorize competitive events for off-road vehicles on existing routes; identify, record, evaluate and, if necessary, protect or subject to data recovery, those cultural resources within the western part of the ACEC; monitor cultural resources; locate and record artifacts removed from the ACEC by amateur archaeologists; increase patrol of the ACEC by Resource Area Rangers; fence or restrict access to cultural resources, if necessary; inform the public of the importance of the cultural resources through interpretive programs or signs; coordinate patrol and visitor management with Mojave "B" Range Naval authorities.

EFFECTIVE DATE: Immediately.

ADDRESS: The management plan, including maps, environmental assessment, and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Avenue, Ridgecrest, CA 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION, CONTACT: Joan Oxendine at the above address or telephone (619) 375-7125.

Date: June 15, 1989.

H. W. Riecken,

Acting District Manager.

[FR Doc. 89-14962 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-40-M

Squaw Spring Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the Squaw Spring Area of Critical Environmental Concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the Squaw Spring ACEC as an area with significant cultural resources which require special management attention. The management plan recommends actions for the protection and preservation of those cultural resources. The Squaw Spring ACEC includes 661 acres of public land with sections 34 and 35, T. 29S, R. 41E, MDM. Authorities for the plan are 43 CFR 8000.0-6, 8341, 8342, 8364, and 8365; Federal Land Policy and Management Act of 1976; Archaeological Resources Protection Act of 1979; National Historic Preservation Act of 1966; and National Environmental Policy Act of 1970.

The development of the management plan included public involvement. The ACEC will remain open to uses which are compatible with the plan, protection, and preservation of cultural resources. The plan recommends the following actions: post "Closed Area" signs at roads in the western half of the ACEC; inventory and map cultural resources within Sec. 35, and amend the boundary of Squaw Spring Archaeological District or ACEC, as appropriate; post "No Camping" signs within the closed area; update sign at entrance of the ACEC; record and photodocument the petroglyphs; monitor the ACEC; coordinate monthly surveillance with Resource Area Rangers; conduct data recovery if condition and trend indicate that cultural resources are seriously threatened.

EFFECTIVE DATE: Immediately.

ADDRESS: The management plan, including maps, environmental assessment, and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Avenue, Ridgecrest, CA 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION, CONTACT: Joan Oxendine at the above address or telephone (619) 375-7125.

Date: June 15, 1989.

H. W. Riecken,

Acting District Manager.

[FR Doc. 89-14963 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-40-M

White Mountain City Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the White Mountain City Area of Critical Environmental Concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the White Mountain City ACEC as an area with significant cultural resources which require special management attention. The White Mountain City ACEC includes 830 acres of public land managed by the Bureau of Land Management in sections 23 and 26, T. 6S, R. 36E, MDM. The authorities for the management plan are 43 CFR 8000.0-6, 8341, 8342, 8364, and 8365; Federal Land Policy and Management Act of 1976; Archaeological Resources Protection Act of 1979; National Historic Preservation Act of 1966; and National Environmental Policy Act of 1970.

The development of the management plan included public involvement. The ACEC will remain open to uses which are compatible with the management plan, protection, and preservation of the cultural resources. The plan recommends the following actions: close those roads which branch off from Wyman Creek Road and which are conducive to disturbance of cultural resources; close the ACEC to camping to discourage further vandalism to historic structures; erect signs informing the public of actions prohibited by the management plan and of the historical significance of the ruins; erect signs and barriers at roads which are closed; pursue cooperative effort with nearby Deep Springs College to inventory the ACEC and develop a stewardship for it; establish photo overview points for annual monitoring; establish a photo record of petroglyphs for biennial monitoring; coordinate a schedule for routine surveillance with Resource Area Rangers.

EFFECTIVE DATE: Immediately.

ADDRESS: The management plan, including maps, environmental assessment and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Avenue, Ridgecrest, California 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION CONTACT: Joan Oxendine at the above address or telephone (619) 375-7125.

Date: June 15, 1989.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89-14964 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-40-M

[MTM78139; MT-020-09-4212-13]

Realty Action; Exchange of Public Lands in Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action MTM-78139. Exchange of public lands in Wheatland, Sweet Grass, Stillwater, and Yellowstone Counties, Montana, for private land in Stillwater County, Montana with The Nature Conservancy.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. Only sufficient public lands that equal the same monetary value as the private lands will be used in this exchange. The remaining public lands will be made available for other land exchanges.

Principal Meridian, Montana

Tract 1 T. 1 S., R. 23 E.,

Section 14, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$

Tract 2 T. 5 N., R. 12 E.,

Section 28, NE $\frac{1}{4}$

Tract 3 T. 5 S., R. 18 E.,

Section 7, SE $\frac{1}{4}$ NE $\frac{1}{4}$

Tract 4 T. 2 S., R. 15 E.,

Section 5, Lot 4

Tract 5 T. 9 N., R. 18 E.,

Section 22, NW $\frac{1}{4}$, Section 26, W $\frac{1}{2}$ W $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$

T. 8 N., R. 17 E., Section 4, NW $\frac{1}{4}$ SE $\frac{1}{4}$

Tract 6 T. 10 N., R. 14 E.,

Section 22, N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 26, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$

Aggregating 1253.81 acres of public land

Note: If any of the public land listed above is dropped from the exchange for any reason, substitution will be made from the following list aggregating 80 acres:

Tract 7 T. 5 S., R. 18 E.,

Section 10, SW $\frac{1}{4}$ NW $\frac{1}{4}$

Tract 8 T. 5 S., R. 18 E.,

Section 7, NE $\frac{1}{4}$ NW $\frac{1}{4}$

As needed, the United States will exchange these lands to acquire the following described lands from the The Nature Conservancy:

Principal Meridian, Montana

T. 4 S., R. 16 E., Section 11, S $\frac{1}{2}$, Section 14, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$

Aggregating 470 acres of private lands.

DATES: For a period of 45 dys from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director who may sustain, vacate or modify this realty action. In the absence of any objections this realty action will

become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report is available for review at the Miles City District, Billings Resource Area Office, 810 E. Main, Billings, Montana 59105.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals in Tracts 2 and 4.
3. All valid existing rights (e.g. rights-of-way, easements and leases of record).
4. Fair Market Value based on accepted appraisal methods.
5. The 2-year notifications to grazing leases were received May 17, 1989, in accordance with 43 CFR 4110.4-2(b).

6. Pursuant to section 106 consultation under the National Historic Preservation Act, archeological easements may be placed on significant cultural resource properties with selected tracts. There will be an exclusive road easement granted to the Bureau of Land Management in conjunction with or simultaneously with the exchange. This exchange is consistent with Bureau of Land Management policies and the Billings RMP/EIS and has been discussed with state and local officials. The estimated intended time of the exchange is August 1989. The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire lands with high public values, and will increase management efficiency of public lands in the area.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 89-14999 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-09-4214-11; GP9-252; OR-38794]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public land out of Federal ownership. This action will also open 200 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 80 acres of land in Grant County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 16 S., R. 27 E., sec. 22, NW¼.
T. 21 S., R. 31 E., sec. 14, NE¼NE¼.

The areas described aggregate 200 acres in Grant and Harney Counties.

At 8:30 a.m., on July 31, 1989, the above described lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on July 31, 1989, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on July 31, 1989, the above described lands will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on July 31, 1989, the above described lands will be open to

applications and offers under the mineral leasing laws.

Robert E. Mollohan,
Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 15, 1989.
[FR Doc. 89-1500 Filed 6-23-89; 8:45 am]
BILLING CODE 4310-33-M

[AK-932-09-4214-10; AA-12404, AA-12904, AA-12950, and FF-22940]

Termination of Proposed Withdrawal and Reservation of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands on four sites requested by the U.S. Army Corps of Engineers for use as a vehicle maintenance facility and as radio relay sites.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-3342.

SUPPLEMENTARY INFORMATION: Notices of a proposed withdrawal and reservation of lands for the U.S. Army Corps of Engineers, were published in the Federal Register on the dates specified below. The Corps of Engineers has since cancelled its application involving each of the following sites:

(a) Published June 24, 1977 (42 FR 32321). The purpose of the application, serial number AA-12404, was for use as a vehicle maintenance facility and involves the following described lands:

Fairbanks Meridian (Unsurveyed)

A tract of land located in section 8, T. 22 S., R. 12 E., more specifically described as follows:

Commencing at a point on the center line of the Richardson Highway, right-of-way 300 feet, from which the junction of the Denali Highway (M.P. 185.5) bears N. 10°24'30" E., 150 feet to the true point of beginning for this description; thence N. 10°35'30" W., 150 feet; thence N. 79°24'30" E., 100 feet; thence S. 15°21'19" E., 356.23 feet; thence S. 79°24'30" W., 129.58 feet; thence N. 10°35'30" W., 205 feet, more or less, to the true point of beginning.

The area described contains approximately 0.93 acre.

(b) Published July 7, 1977 (42 FR 34937). The purpose of the application, serial number AA-12904, was for use as a radio relay site and involves the following described lands:

Seward Meridian

A tract of land located in T. 20 N., R. 12 E., more specifically described as follows:

Commencing at U.S.C.S. monument "SNLC-1", latitude 61°50' N., longitude 147°20' W., thence N. 55°19' E., 265.70 feet to the true point of beginning for this description; thence south 330 feet; thence west 430 feet; thence north 330 feet; thence east 430 feet to the point of beginning.

The area described contains approximately 3.26 acres.

(c) Published July 7, 1977 (42 FR 34937). The purpose of the application, serial number AA-12950, was for use as a radio relay site and involves the following described lands:

Fairbanks Meridian (Unsurveyed)

A tract of land located in section 28, T. 19 S., R. 11 E., more specifically described as follows:

Commencing at a point identical with latitude 63°14.3' N., longitude 145°38.8' W., thence west 165 feet to the true point of beginning for this description; thence north 495 feet; thence east 330 feet; thence south 660 feet; thence west 330 feet; thence north 165 feet, to the point of beginning.

The area described contains approximately 5.00 acres.

(d) Published August 18, 1977 (42 FR 41668). The purpose of the application, serial number FF-22940, was for use as a radio relay site and involves the following described lands:

U.S. Survey 4290

The area described contains 2.06 acres.

At 8:00 a.m. Alaska Daylight Time, on the date of this publication, such lands will be relieved of the segregative effect of the proposed withdrawals.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 89-15001 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-JA-M

National Park Service**Upper Delaware Scenic and Recreational River**

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: June 30, 1989, 7:00 p.m.*

*Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

Inclement Weather Reschedule Date:
July 14, 1989.

ADDRESS: Town of Tusten Hall,
Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT:

John T. Hutzky, Superintendent; Upper
Delaware Scenic and Recreational
River, P.O. Box C, Narrowsburg, NY
12765-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The
Advisory Council was established under
section 704 (f) of the National Parks and
Recreation Act of 1978, Pub. L. 95-625,
16 USC 1724 note, to encourage
maximum public involvement in the
development and implementation of the
plans and programs authorized by the
Act. The Council is to meet and report to
the Delaware River Basin Commission,
the Secretary of the Interior, and the
Governors of New York and
Pennsylvania in the preparation and
implementation of the management
plan, and on programs which relate to
land and water use in the Upper
Delaware region. The agenda for the
meeting will surround disposal of
seepage materials in the Upper
Delaware Region.

The meeting will be open to the
public. Any member of the public may
file with the Council a written statement
concerning agenda items. The statement
should be addressed to the Upper
Delaware Citizens Advisory Council,
P.O. Box 84, Narrowsburg, NY 12764.
Minutes of the meeting will be available
for inspection four weeks after the
meeting, at the permanent headquarters
of the Upper Delaware Scenic and
Recreational River; River Road, 1 1/4
miles north of Narrowsburg, New York;
Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89-15051 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 69X)]

Norfolk and Western Railway Co.; Abandonment Exemption Between Briery and Abilene Connection, VA

Applicant has filed a notice of
exemption under 49 CFR 1152 Subpart
F—*Exempt Abandonments* to abandon
its 4.8-mile line of railroad between
milepost V-136.9, at Briery, VA, and
milepost V-141.7, at Abilene
Connection, VA.

Applicant has certified that: (1) No
local or overhead traffic has moved over
the line for at least 2 years; (2) any

overhead traffic on the line can be
rerouted over other lines; and (3) no
formal complaint filed by a user of rail
service on the line (or a State or local
government entity acting on behalf of
such user) regarding cessation of service
over the line either is pending with the
Commission or with any U.S. District
Court or has been decided in favor of
the complainant within the 2-year
period. The appropriate State agency
has been notified in writing at least 10
days prior to the filing of this notice.

As a condition to use of this
exemption, any employee affected by
the abandonment shall be protected
under *Oregon Short Line R. Co.—
Abandonment—Goshen*, 360 I.C.C. 91
(1979). To address whether this
condition adequately protects affected
employees, a petition for partial
revocation under 49 U.S.C. 10505(d)
must be filed.

Provided no formal expression of
intent to file an offer of financial
assistance has been received, this
exemption will be effective on July 26,
1989 (unless stayed pending
reconsideration). Petitions to stay that
do not involve environmental issues,¹
formal expressions of intent to file an
offer of financial assistance under 49
CFR 1152.27(c)(2),² and trail use/rail
banking statements under 49 CFR
1152.29 must be filed by July 6, 1989.³
Petitions for reconsideration and
requests for public use conditions under
49 CFR 1152.28 must be filed by July 17,
1989, with:

Office of the Secretary, Case Control
Branch, Interstate Commerce
Commission, Washington, DC 20423.

A copy of any petition filed with the
Commission should be sent to
applicant's representative:

Virginia K. Young, Norfolk Southern
Corporation, Three Commercial Place,
Norfolk, VA 23510-2129.

If the notice of exemption contains
false or misleading information, use of
the exemption is void *ab initio*.

¹ A stay will be routinely issued by the
Commission in those proceedings where an
informed decision on environmental issues (whether
raised by a party or by the Section of Energy and
Environment in its independent investigation)
cannot be made prior to the effective date of the
notice of exemption. See *Exemption of Out-of-
Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity
seeking a stay involving environmental concerns is
encouraged to file its request as soon as possible in
order to permit this Commission to review and act
on the request before the effective date of this
exemption.

² See *Exempt. of Rail Abandonment—Offers of
Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules
published in the Federal Register on December 22,
1987 (52 FR 48440-48446).

³ The Commission will accept a late-filed trail use
statement so long as it retains jurisdiction to do so.

Applicant has filed an environmental
report which addresses environmental
or energy impacts, if any, from this
abandonment.

The Section of Energy and
Environment (SEE) will prepare an
environmental assessment (EA). SEE
will issue the EA by June 30, 1989.
Interested persons may obtain a copy of
the EA from SEE by writing to it (Room
3219, Interstate Commerce Commission,
Washington, DC 20423) or by calling
Elaine Kaiser, Acting Chief, SEE at (202)
275-7684. Comments on environmental
and energy concerns must be filed
within 15 days after the EA becomes
available to the public.

Environmental, public use, or trail
use/rail banking conditions will be
imposed, where appropriate, in a
subsequent decision.

Decided: June 20, 1989.

By the Commission, Joseph H. Dettmar,
Acting Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-15060 Filed 6-23-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Community Relations Service (CRS); Availability of Funding for Emergency Physical Care, Maintenance and Other Services to Certain Alien Families and Alien Unaccompanied Minors

AGENCY: Community Relations Service
(CRS), U.S. Department of Justice.

ACTION: Notice of availability of funding
for a Cooperative Agreement to support
the provision of emergency physical
care, maintenance and other services to
alien families and alien unaccompanied
minors who have been apprehended
and/or processed by the Immigration
and Naturalization Service (INS) and
are currently awaiting action on their
immigration status.

SUMMARY: This announcement governs
the award of a Cooperative Agreement
to a public or private non-profit
organization or agency to provide
eligible alien families and alien
unaccompanied minors with emergency
physical care, maintenance and other
services. Hereafter, the Program
providing such services shall be referred
to as the Alien Shelter Care Program
(ASCP).

DATE: Closing Date: 5:00 p.m. Eastern
Daylight Time; August 4, 1989.

SUPPLEMENTARY INFORMATION: Purpose and Scope

The ASCP was established in February 1989 by the Department of Justice as part of a Departmental plan to address the exigent situation in the Lower Rio Grande Valley caused by unprecedented numbers of undocumented Central American and other aliens entering the Valley. The ASCP responds to the complex and difficult legal and humanitarian issues associated with the apprehension and processing of undocumented alien families and children. At the same time, the ASCP alleviates the serious burdens upon local communities that result from the entry of large numbers of undocumented aliens into the United States through the Rio Grande Valley.

The purpose of the ASCP is to provide temporary physical care, maintenance and other services to alien family units an alien unaccompanied minors who have been apprehended by the INS in the Lower Rio Grande Valley of Texas. Shelter residents are comprised of individuals who have been processed by the INS for deportation proceedings and are awaiting a final determination on those proceedings, or have applied for asylum and are awaiting action on their applications.

Through a Cooperative Agreement with the American Red Cross (ARC), CRS currently administers the ASCP in the Lower Rio Grande Valley. As the federal agency responsible for this Program, CRS oversees the ASCP to ensure that it is operated in compliance with Department of Justice policies, federal rules, regulations and other governing procedures. Additionally, CRS ensures that all parties involved in the day-to-day operations of the ASCP comply with all formal and informal agreements among the involved federal agencies and the Recipient. These agencies include CRS, INS and the U.S. Public Health Service (PHS). CRS also monitors the provision of services, coordinates and facilitates inter-agency communication and cooperation, and ensures the execution of the various responsibilities among the parties involved.

The unique public/private partnership between CRS and ARC has enabled the Department of Justice and the ARC to respond in an effective and humane manner to the sheltering needs of undocumented families and children in the Lower Rio Grande Valley. The Recipient agency should agree to participate in the funding of the ASCP either through a 5% cost-sharing agreement with the CRS or through a 5% in-kind contribution.

Through this Cooperative Agreement, CRS intends to transfer all existing ARC administrative and operational responsibilities, governing procedures, use of facilities, use of equipment, certain personnel and all legal obligations thereof to the new Recipient. All facilities and equipment will revert back to the federal government at the end of the term of the Cooperative Agreement.

Included in the transfer of responsibilities are the following:

(1) Facilities

Existing shelter care complexes and all improvements and renovations therein located at 424 Ringold Rd., Brownsville, Texas 78520, and East 77 Sunshine Strip, Near Route 5, Box 5148, San Benito, Texas 78586.

(2) Legal Obligations

- a. All ARC leases and contractual agreements and arrangements; and
- b. All ARC formal or informal agreements currently in place that are essential to the successful administration and operation of the ASCP.

(3) Personnel

The 49 individuals who were locally hired by the ARC for the administrative, direct service and support activities of the Program. A complete listing of position descriptions for these personnel will be provided to the Recipient at the Technical Assistance Conference.

(4) Administration and Program Operations Including

- a. Overall management system and administration of the ASCP including governing procedures and current operating organizational structure and systems detailed in the ARC operations manual.
- b. Client Intake Processing and Computerized Data Processing Services.
- c. Provision of:
 1. Shelter, Sleeping Arrangements and Food Service;
 2. Clothing;
 3. Personal Items;
 4. Sanitation Services;
 5. Laundry Services;
 6. Educational Services;
 7. Recreational Services;
 8. Facility Maintenance and Renovations;
 9. Utilities Management Services;
 10. Security Services;
 11. Telecommunications Services;
 12. Medical Services Supplemental to PHS Activities; and
 13. Other, as funding permits.

(5) Equipment, Including

- a. Kitchen;
- b. Food service;
- c. Computer;
- d. Cots;
- e. Telecommunications;
- f. Photo-copying;
- g. Tables, Chairs and Desks;
- h. Air Conditioners;
- i. Medical Supplies;
- j. Washing Machines, Clothes Dryers and Clothes Lines;
- k. Recreational; and
- l. Educational.

Recipients must comply with the existing guidelines and operating procedures as currently established for the ASCP. These guidelines and procedures will be enumerated in detail at the Technical Assistance Conference.

Although the Recipient is responsible for the delivery of basic shelter care, maintenance and other services of the ASCP, a number of federal agencies including CRS, INS, and PHS are responsible for other legal requirements of the Program and thus are inter-related and involved in the day-to-day operations of the program. Due to the involvement of these federal agencies and, to avoid any real or perceived conflicts of interest, applicants with ongoing advocacy programs for Central American and other aliens must show, in detail, how these advocacy functions and activities will be completely segregated from the operational aspects of the program. No legal activities or advocacy services are to be performed by the Recipient.

Shelter Operations

The current ASCP consists of 2 complexes within 20 miles of each other that have the combined capacity to shelter a total population of 917 residents. These shelter complexes operate 24 hours a day, seven days a week and their operation is extremely labor intensive. If the eligible population decreases, the main facility at Brownsville would remain operational whereas the facility at San Benito would be maintained as a contingency site. Since February 1989, the ARC has provided services to over 7,000 individuals. The average stay of shelter residents is approximately 3 weeks.

Shelter residents are not detained by the INS at the ARC shelter complexes. For administrative processing purposes, residents are deemed to be in the constructive custody of the INS. All shelter residents are free to leave the shelters during the day but must report back each evening if they wish to continue receiving services at the

shelter. The requirement of reporting back to the shelter is for the purpose of providing structure and ensuring safety within the shelter, and to ensure respect for the rights of other shelter residents.

INS Liaison personnel are posted in separate administrative quarters at the shelter complexes presently on a 24 hour basis, 7 days a week. These liaison personnel provide information to the residents regarding their status, scheduled hearings and general immigration procedures. No INS processing takes place at the shelters.

PHS operates a clinic at the shelter complex to provide medical screening and other related health services. Medical services include screening for infectious diseases, immunizations, physical examinations, pre-natal care and, as needed, mental health evaluations. If definitive medical care is needed, the residents are referred to local hospitals or clinics. In addition to this, the ARC operates an aid station supervised by registered nurses at the shelter complexes for general sick call, first aid functions; provides a system of emergency health care services after the PHS clinic closes each day.

One of the two current shelter complexes is fully equipped with a kitchen that has the capacity to prepare up to 10,000 meals. This kitchen facility serves both shelter complexes. The average number of meals prepared at the shelter is 2,200 per day. Approximately 500 meals and snacks, as needed, are transported by the ARC to the second facility 3 times a day.

The ASCP provides educational services to all school age children at the shelter complexes. Approximately 12 teachers and teacher aids are utilized to provide educational services. Classes are held five days a week for 3 hours per day. In addition, structured recreational activities are provided for 3 hours each day.

Neither CRS nor the Recipient are authorized to provide any type of direct legal services to shelter residents. Recipients are prohibited from providing legal services or advocacy services on behalf of shelter residents. However, CRS and the Recipient ensure that the residents have access to legal representation while in the shelter. Legal services, including individual consultations and group orientations, are provided by pro-bono attorneys and authorized paralegals located in an office at the shelter complex.

Authorization. Authority for the CRS ASCP is contained in the Acting Associate Attorney General's Memorandum of February 21, 1989, and in Title V, Section 501(c) of Public Law

96-422 (the Refugee Education Assistance Act of 1980).

Award Instruments. An award to support ASCP services will be in the form of a Cooperative Agreement issued by CRS.

The administration of this award shall require the substantial involvement of the Federal Government, including, but not limited to:

1. The monitoring of the provision of services, coordinating and facilitating inter-agency communication and cooperation, and ensuring the successful execution of the various responsibilities among the parties involved in the day-to-day operation of the program;

2. Provision of technical assistance; and

3. Tracking of residents being provided services at the shelter complex.

The CRS will negotiate a Cooperative Agreement with the applicant approved by the Director, CRS.

Available Funds. Approximately \$1.2-\$1.8 million will be available to support this program. The estimated range and amounts of available funds contained in this Notice are intended to serve as bench marks only. These estimates do not bind CRS to any specific level of funding.

Future funding for the Alien Shelter Care Program will be contingent upon need and the availability of Federal appropriations. If the need continues to exist and adequate funds are available, the Director, CRS, anticipates continuation of this program.

Program Performance Period. Awards normally will not exceed a 6 month program performance period.

Proposal Review. Proposals will be reviewed, evaluated, rated, and competitively ranked by a Review Panel on the basis of weighted criteria listed in this Notice. Applicants must receive a minimum score of 65 points, out of a total of 100 possible points, in order to be considered for funding. All funding decisions are made at the discretion of the Director, Community Relations Service. Awards will be subject to the availability of funds.

Technical Assistance Conference. CRS will hold a Technical Assistance Conference (TAC) in regard to this Notice. A three day conference will be held in Brownsville, Texas the week on July 12, 13, and 14, 1989. The Conference will consist of tours of the ASCP shelter complexes, presentation by CRS and ARC on the operating procedures and guidelines of the ASCP and question and answer sessions. Interested applicants are encouraged to attend the TAC, at the applicant's expense. Expenses incurred at the TAC will be treated as

pre-award costs for the selected applicant. Detailed information will be included as part of the Proposal Application Package, which can be obtained from CRS by calling (301) 492-5818.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in: (1) The administration of large residential or community-based shelter programs for documented aliens, or similar populations; and/or (2) the resettlement of, or provision of other relevant services to documented aliens, or similar populations, are eligible to apply.

Subcontractual arrangements for the administration of an ASCP will be acceptable only in the case of provision of service by national-level organizations through local-level agencies which have a demonstrable affiliation with, or membership in, the national-level organization.

Consortiums or joint ventures between or among unrelated agencies or organizations, i.e., those where no formal affiliation or membership relationship exists, will not be considered for funding under the terms of this Notice.

Present CRS Recipients are not precluded from submitting applications under the terms and conditions of this Notice.

Eligible Client Population

Under the terms of this announcement, the eligible client population consists of alien families and alien unaccompanied minors who have either been processed by INS for deportation proceedings and are awaiting action on those proceedings, or have applied for asylum and are awaiting action on their applications, or have posted bond but are awaiting transportation to their final point of destination.

Application Contents

Applicants are required to set forth in detail a proposal that includes the following:

1. **Application.** Standard Form 424, Application for Federal Assistance.
2. **Program Abstract.** A brief summary of the proposal which includes names and locations of relevant agencies and the various services to be rendered.
3. **Organization/Agency Background.** A summary of:
 - a. Applicant's history, philosophy and goals;
 - b. Applicant's rationale and objectives in applying for the

Cooperative Agreement to administer the ASCP; and

c. Organization experience with regard to (1) the administration of large residential, community-based shelter programs for documented aliens, or similar populations; or (2) the resettlement of or provision of other relevant services to documented aliens, or similar populations.

4. *Community Support.* Applicants are required to detail those measures which have and will be taken to develop and maintain community receptivity and support, and/or reduce community opposition to the program and its clientele.

5. *Interagency Coordination.* A detailed description of measures to assure on-going communication with the relevant CRS, INS, PHS, law enforcement, and other officials.

6. *General Program Design.* A summary description addressing:

a. Identification of significant milestones, as they relate to program implementation;

b. Applicant's Organization/Agency Management: Applicants are required to submit a comprehensive plan which outlines the proposed management of the program. The plan must include the following:

(1) A comprehensive organizational chart of the applicant organization or agency which,

(a) Shows the overall lines of authority, responsibility, and supervision in the organization or agency as a whole;

(b) Shows the relationship of the proposed project to other organization and agency projects; and

(c) Shows the relationship of the local-level affiliate to the national-level organization, if applicable.

(2) Identification of the staff member who shall assume overall supervision of the program at the applicant organization or agency level;

(3) A description of the methods for program and financial administration by the applicant organization or agency;

(4) A description of the means of communication among the various levels of program and financial administration;

For national level organizations whose local-level affiliate will administer the program the following material must also be included:

A description of the specific services to be rendered by the national-level organization to its local level affiliate and the specific services to be rendered by the affiliate and a monitoring plan.

c. Local Level Affiliate Management Plan

For national-level organizations whose local-level affiliate will be responsible for the administration and operation of the program, a management plan must also be included which contains the following:

(1) A comprehensive organizational chart of the local-level affiliate which:

a. Shows overall lines of authority and responsibility within the local-level affiliate; and

b. Shows the relationship of the proposed program to other agency programs.

(2) Identification of the local-level affiliate staff member who will assume overall responsibility for the program.

(3) A description of the methods for the administration and supervision of the program which identifies all responsible staff members.

d. On-Site Program and Staff Supervision

(1) A detailed description of the methods for the on-site administration and supervision of program staff;

(2) Proposed staff schedule;

(3) Proposed staff training and which key personnel will be sent in advance of the program period for on-site training at the existing Program site;

(4) A description of the means of communication among the various levels of program administration; and

(5) The roles of consultants, if any, and rationale for their use.

(6) The Recipient will be required to provide certification that it is in compliance with Sec. 5153 of the Drug-Free Work Place Act of 1988, P.L. 100-690, Title V, Subtitle D.

e. A detailed description of the methods for mobilizing and utilizing volunteers for the provision of services;

f. A detailed narrative description of how the Recipient will ensure that the facility complexes and operations of the ASCP are in compliance with all applicable health, safety, zoning requirements, regulations, standards and practices;

g. A detailed narrative description which demonstrates that the Recipient will be able to implement the Operational and Procedural Manual and deliver the following services to an average daily population of 750:

(1) Shelter;

(2) Food Service;

(a) Three nutritionally balanced meals, snacks and baby food; and

(b) The transport of meals between facilities;

(3) Clothing;

(a) Emergency clothing, as needed;

(4) Personal Items;

(a) Initial supplies of toiletries; and

(b) Periodic replenishment of personal items;

(5) Sanitation Services;

(a) Toilets;

(b) Bathing facilities; and

(c) Waste disposal;

(6) Laundry Services;

(a) Client access to laundry facilities for washing of clothing;

(7) Educational Assessment and Services;

(8) Recreational Services;

(a) Team sports equipment and playing areas;

(b) Movies; and

(c) Others; if any,

(9) Facility Maintenance/Renovations;

(a) Plumbing;

(b) Electrical;

(c) Construction; and

(d) Other, as necessary;

(10) Utilities Management Services;

(a) Water;

(b) Sewer;

(c) Electricity; and

(d) Telephone;

(11) Security Services;

(12) Telecommunications Services;

and

(a) Telephones;

(b) Facsimile machines; and

(c) Data processing facilities and computer support;

(13) Medical services supplemental to PHS for general sick call, first aid and a system of emergency health care after the PHS clinic closes each day; and

(14) Computerized Data Collection Services;

(a) Data entry services; and

(b) Preparation of periodic reports and statistical summaries, including, but not limited to, daily head counts, bi-weekly rosters of new clients entering the program and clients exiting the program, and census of clients.

7. Program Records and Accountability.

Applicants are required to set forth a detailed narrative describing the following:

a. Internal administrative controls, such as daily logs, daily staff meetings, in-house resident leader meetings, program policies and procedures;

b. Administrative program records such as cash disbursement records, other financial records, inventory lists, medical records, medication dispensing records, food allocation, and similar files;

c. Methods for insuring 24-hour monitoring of the program and its clients, such as sign in/sign out sheets; and

d. Plan to ensure resident compliance with shelter complex rules;

8. *Program Evaluation.* A plan for information analysis and program evaluation which include, at minimum, data pertaining to and assessment of:

- a. Achievement of overall stated goals and objectives of the program;
- b. Client Statistics, including number served by program and serious incidents;
- c. Factors contributing to or inhibiting successful delivery of services.

9. *Budget and Budget Narrative*, including:

a. *A Proposed Budget*

A narrative explanation for each line item in each budget category must accompany the proposed budget. The following budget structure should be used to provide appropriate cost breakdowns:

(1) *Personnel.* Salaries and wages only. Fees and expenses for consultants shall be included in line "other." The name and title, salary amounts and level of effort must be identified for each position. A current position description is required for each position.

(2) *Fringe Benefits.* Submit a current copy of the negotiated fringe benefit rate. If fringe benefits are applicable to direct salaries and wages and treated as part of the indirect cost rate negotiation agreement, leave blank.

(3) *Travel.* Use only for travel (domestic) of employees on the grant or cooperative agreement. Include estimated cost breakout for airfare, per diem (limited to prevailing federal government per diem levels), number of days, number of persons traveling and purpose of travel. Travel for consultants shall not go in this line item, nor shall local transportation (i.e., where no out-of-town travel is involved).

(a) Local travel by staff is reimbursed at the rate of 22 cents/mile.

(b) Other travel: Emergency travel, travel to approved or required conferences, such as the yearly CRS/INS conference, or other travel required at the discretion of the government should be included as a separate line item. For the yearly CRS conference, agencies should base this item upon the participation of 2 staff members for 4 days at the prevailing federal government per diem level.

(4) *Equipment.* Equipment refers only to non-expendable personal property, which is defined as follows:

(1) Non-expendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property;

(b) Personal property means property of any kind except real property. Each item of non-expendable personal property costing \$1,000 and each item of general purpose equipment costing over \$500 must be identified and explained (i.e., office equipment and furnishings which are usable for activities other than the technical specialized aspects of the grant program).

(5) *Supplies.* Include all tangible personal property except that which is included in the equipment line. Requests in excess of \$500 per category of tangible personal property (supplies) must be identified and explained.

(6) *Contractual.* Use of procurement contracts (except those which belong on other line items such as equipment, supplies and construction). It must not include payments to individuals such as stipends, consulting fees, benefits, etc.

(7) *Renovation.* Costs for alteration and renovation must be explained in detail. In cases when renovation is required to bring a facility into compliance with existing codes and regulations, the extent and reasonableness of renovation costs depend upon the extent of repairs required, property values, etc. Repair work and renovation require documented estimates of cost and time and a description of the repair. Programs must conform to the procurement standards set forth in Office of Management and Budget (OMB) Circular A-122. All repairs and renovations require the prior approval of the CRS.

(8) *Client Costs.* All costs directly related to entrants such as essentials, furnishing and utensils, food or food allowances, personal items, clothing, local transportation, assistance payments, medical services, and so on, must be identified and explained.

(9) *Other.* All direct costs not clearly covered in categories listed above, i.e., consulting costs, local transportation, space and equipment rental, and van usage must be identified and explained. Requests for any item identified in the Office of Management and Budget Circular (OMB A-122) which require approval by the CRS Grants Officer must be identified and explained. Also identify utilities and breakout costs per month.

(10) *Indirect Cost.* Identify and explain indirect cost items.

a. If an approved plan exists, CRS may accept an indirect cost rate or allocation plan previously approved for a recipient by a Federal granting agency or the basis of allocation methods substantially in accord with those set forth in the applicable CRS Cost Circular.

(1) If Federally approved rates are used as the basis for charging indirect costs to grant funds, a copy of the Federal agency approval document shall be furnished to CRS as part of the grant application.

b. If no approved plan exists, indirect costs may not be charged to grant funds on the basis of predetermined fixed rates or a negotiated lump sum, unless such rate or lump sum is approved in writing by CRS.

(1) Recipients desiring actual indirect costs, and not having a Federally-approved rate must submit proposals to CRS Grants Management Office.

(2) In lieu of submitting actual indirect cost proposals, flat rates, not in excess of ten percent of direct labor costs (including fringe benefits), or five percent of total direct costs may be allowed, as a predetermined rate.

(a) Such rates are based upon general with respect to minimum overhead support levels required for grantee operations.

(b) Where flat rates are accepted in lieu of actual indirect costs, recipients may not also charge expenses normally included in overhead pools, such as accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

10. *Applicant's Addenda Material.* Applicants are required to submit the following material as an addendum to the program proposal. Material is required for all participating agencies, i.e., applicant organizations as well as local-level affiliates, as applicable:

a. *Organization/Agency Administration*

- 1. A copy of the Organization/Agency's Articles of Incorporation;
- 2. A copy of the IRS status as a non-profit organization/agency;
- 3. A list of officers and board members, if applicable; and
- 4. A list of professional affiliations and certifications.

b. *Organizational/Agency Standards and Policies*

- 1. Personnel handbook, statement of standards of conduct, and agency EEO guidelines;
- 2. Statement regarding professional and agency liability; and
- 3. A copy of policy regarding confidentiality of client information and records.

c. *Staff*

- 1. Position descriptions and resumes, if individuals have been identified for certain positions, for all personnel to be hired and of individuals responsible for administering the program from the

applicant organization/agency level and local-level affiliate, as applicable; and

2. Resumes of program consultants.

d. Community Support

A list of voluntary or donated resources, including letters of intent from agencies or entities providing the resources.

e. Finance and Budget

1. A description of the financial management system of the applicant and local-level affiliate, as applicable, to include:

- a. Prior experience in the large scale purchasing of bulk commodities;
- b. The agency's experience in working with local merchants and the agency's ability to pay these merchants on a timely basis;
- c. Description of the degree of automation of the accounting system;
- d. A statement on the agency's ability to operate on a cost-reimbursable basis or whether it would require advance of federal funds;

2. A copy of the latest financial audit of the applicant and local-level affiliate, as applicable; and

3. A listing of other Federal, State, local or foundation grants, cooperative agreements, or contracts administered by the applicant and local-level affiliate, as applicable.

This material should include information regarding the funding source, grant, cooperative agreement, or contract number; level of financial support, purpose of grant, cooperative agreement, or contract; grant, cooperative agreement, or contract performance period; and name, address, and telephone number of the grant, cooperative agreement, or contract officer from the relevant agency.

f. Subcontracts/Subgrants

Subcontracts/Subgrants refers to those procurement arrangements which will be entered into by the Recipient for the delivery of certain goods or services such as renovations, which will not be provided directly by the program. Identify all proposed services which are to be provided through subcontractors/subgrants.

g. Recipient will be required to comply with federal regulations on debarment, suspension and other responsibility matters.

Criteria for Evaluation of ASCP Applications

ASCP applications will be competitively reviewed, evaluated, rated and ranked by a Review Panel, according to the weighted criteria outlined below.

Applicants must receive a minimum score of 65 points out of a total of 100 possible points in order to be considered for funding.

1. The adequacy of the overall organizational Management Plan to implement and administer the Operational and Procedural Manual as demonstrated by:

- a. Proposed plans for overall agency management and program management including clear organizational charts reflecting lines of authority and responsibility;
- b. The description of the methods for the administration and supervision of the program and means of communication among the various levels of program administration; and
- c. Size of staff pool, staff qualifications, plans for staff supervision, staffing patterns, the plan for staff recruitment and proposed staff training.

(20 Points)

2. The capacity for providing required services, as demonstrated by:

- a. An integrated program plan to provide all program services;
- b. The plan for the utilization of volunteers and donated services; and
- c. Sensitivity to the issues of culture, race, ethnicity and native language and use of resources in a manner which contributes to mutual support.

(20 Points)

3. The qualifications of the applicant organization or agency, and the local-level affiliate, if applicable, with respect to:

- a. The adequacy of the financial management system of the applicant;
- b. Prior experience in the large scale purchasing of bulk commodities;
- c. The plan to work with local merchants and to ensure timely payment of local vendors and merchants;
- d. The adequacy of the system to develop and maintain administrative control records such as cash disbursement records, other financial records, inventory lists, medication dispensary records, food allocation and similar files.

(15 Points)

4. The degree to which the proposed budget and budget narrative is reasonable, succinct, cost effective and likely to achieve program objectives.

(10 Points)

5. The degree to which the applicant complies with cost sharing requests of this proposal either through the assumption of a cash share of the budget or through in-kind contributions.

(10 Points)

6. The adequacy of the program evaluation plan.

(5 Points)

7. The comprehensiveness of the requested application addenda material.

(5 Points)

8. The qualifications of the applicant organization or agency, and the local-level affiliate, if applicable, with respect to:

- a. Demonstrated experience in (1) the administration of large residential, community based shelter programs for documented aliens, or similar populations, or (2) the resettlement of or provision of other relevant services to documented aliens, or similar populations;
- b. Demonstrated capacity for effective programmatic and fiscal management and accountability of programs serving large numbers of residents; and
- c. The rationale for wanting to assume responsibility for the ARC operations.

(15 Points)

Application Submission

Application Submission

Eligible applicants must request a Proposal Application Package, which includes Applicant Form 424, Details on the Technical Assistance Conference, and a copy of the Program Announcement from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Senior Grants Specialist.

Proposal Application Packages may also be obtained by contacting the Community Relations Service at 301-492-5818, or, 1-800-424-9304.

Applicants must submit a signed Applicant Form 424 and a signed original and two copies of the proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Grants Officer.

Applications Delivered by Mail

All applications must be received by registered mail by 5:00 p.m. (Eastern Daylight Time), August 4, 1989. Only those applications received on or before that time will be considered as timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the United States Department of Justice, Community

Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time, daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Catalogue of Federal Domestic Assistance Number: 16.201.

Jeffrey L. Weiss,

Associate Director, Community Relations Service.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, *Intergovernmental Review of Federal Programs*, all States have the option of designing procedures for the review and comment on Federally assisted programs.

Each applicant is required to notify each State in which it is proposing activities under this Announcement and to comply with the States' established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC)

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 45 days after the day of publication, addressed to: Jeffrey L. Weiss, Associate Director, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

[FR Doc. 89-15071 Filed 6-23-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 8, 1989, a proposed Consent Decree in *United States v. Altoona City Authority*, Civil No. 89-115] was lodged with the United States District Court for the Western District of Pennsylvania. The proposed Consent Decree arises under the Clean Water Act, 33 U.S.C. 1251 et seq. and resolves violations by the Altoona (Pennsylvania) City Authority of the discharge limitations and other terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permits issued pursuant to Section 402 of the Clean Water Act, 33

U.S.C. 1362. The Consent Decree provides for payment of a \$180,000 civil penalty and implementation of remedial construction measures of the Authority's two wastewater treatment facilities. The agreement requires the Authority to achieve full compliance with final effluent limitations at its Easterly wastewater treatment facility by April 1, 1991 and at its Westerly wastewater treatment facility by November 17, 1990.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Altoona City Authority*, DJ Ref. 90-5-1-1-2936.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of \$2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-14965 Filed 6-23-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

[Civil No. 89-4522]

Pacific Dunlop Holdings Inc., et al.; Proposed Final Judgment, Stipulation and Competitive Impact Statements

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States v. Pacific Dunlop Holdings Inc., Becton, Dickinson*

and Co., and Edmont, Inc., Civil No. 89-4522.

The Complaint in this case alleges that the effect of the proposed acquisition of Edmont by Pacific Dunlop may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the following United States markets: (1) Dipped unsupported nitrile industrial gloves, (2) liquid proof dipped supported latex industrial gloves, (3) liquid proof dipped supported nitrile industrial gloves, (4) liquid proof dipped supported neoprene industrial gloves, and (5) liquid proof dipped supported PVC industrial gloves.

The proposed Final Judgment: (1) Orders and directs Pacific Dunlop to divest any and all interest that it has or shall acquire in Ansell Granet Inc. and (2) orders and directs Pacific Dunlop to divest any and all interest that it has or shall acquire in certain real, personal, and intellectual property used in the production or sale of industrial gloves at Edmont's industrial gloves facility in Canton, Ohio.

The proposed Final Judgment requires Pacific Dunlop to divest the above described assets within six (6) months of the filing of the proposed Final Judgment. If the divestitures are not accomplished within the 6-month period, the Court shall, upon application of the United States, appoint a trustee to effect the remaining divestitures. Under the proposed Final Judgment, Pacific Dunlop or the trustee, whichever is then responsible for effectuating the divestitures required, shall notify the Department of any proposed divestiture required by the Final Judgment. The divestitures are to be made to persons acceptable to the United States in its sole determination.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the *Federal Register* and filed with the Court. Comments should be directed to John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, United States Department of Justice, The Curtis Center, Suite 650, 7th & Walnut Streets, Philadelphia, PA 19106 (Area Code 215) 597-7401, within the statutory 60-day comment period.

Joseph H. Widmar,

Director of Operations Antitrust Division.

In the United States District Court for the Eastern District of Pennsylvania.

In the matter of *United States of America, Plaintiff, v. Pacific Dunlop Holdings Inc.; Becton, Dickinson and Company; and Edmont, Inc., Defendants.* Civil No. 89-4522.

Filed: 6/16/89.

Stipulation

It is stipulated by and between the undersigned parties, by their respective officers or attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff United States of America:

Michael Boudin,

Acting Assistant Attorney General.

Judy Whalley,

John W. Clark,

John J. Hughes,

Robert E. Connolly,

Attorneys, Antitrust Division, U.S. Department of Justice.

Richard S. Rosenberg,

Mary Ann Ryan,

Attorneys, Antitrust Division, Department of Justice, Middle Atlantic Office, The Curtis Center, Suite 650, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-7401.

For the Defendant Pacific Dunlop Holdings Inc.

Pepper, Hamilton & Scheetz.

By:

Hugh Latimer,

Pepper, Hamilton & Scheetz, 1300 19th Street, NW., Suite 700, Washington, DC 20036.

For the Defendant Becton, Dickinson and Co.

By:

Roy Weber,

Associate General Counsel, Becton, Dickinson and Co., One Becton Drive, Franklin Lakes, New Jersey 07417.

For the Defendant Edmont, Inc.

By:

Roy Weber,

Vice President and General Counsel, Edmont, Inc., 1300 Walnut Street, Coshocton, Ohio 43812.

So ordered.

United States District Judge.

Dated:

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on June, 1989, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, Before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Ansell Granet" means any and all interest that defendants have in all of the real, personal, and intellectual property of Ansell Granet Inc., a Delaware corporation.

B. "Edmont" means Edmont, Inc., a Nevada corporation wholly-owned by Becton, Dickinson and Company, a New Jersey corporation.

C. "Canton facility" means any and all interest that defendants have or shall acquire in all of the real, personal and intellectual property used in the

production or sale of industrial gloves by Edmont in Canton, Ohio.

D. "Industrial gloves" means gloves used to protect hands from cuts and abrasions and environmental, chemical, and biological agents and/or to protect products from hand-borne contamination.

E. "Pacific Dunlop" means Pacific Dunlop Holdings Inc., a Delaware corporation wholly-owned by Pacific Dunlop Limited, a Victoria (Australia) corporation.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Pacific Dunlop shall require, as a condition of the sale or other disposition of all or substantially all of its interest in the Canton facility and Ansell Granet, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Pacific Dunlop is hereby ordered and directed to divest, to an eligible purchaser or purchasers, any and all interest that it has or shall acquire in Ansell Granet, including the right to use the name "Granet."

B. Pacific Dunlop is hereby ordered and directed to divest, to an eligible purchaser or purchasers, any and all interest that it has or shall acquire in all the real, personal, and intellectual property used in the production or sale of industrial gloves at the Canton facility, but excluding formers, patents, trademarks, trade names, copyrights, trade dress, nitrile formulations, and research and development.

C. Pacific Dunlop shall provide to the purchaser or purchasers of the Canton facility all proprietary information (subject to Section IV.B above) required (1) To manufacture and package each type of industrial glove product manufactured for commercial sale at the Canton facility at any time since January 1, 1987, to standards of quality at least equal to currently manufactured

product and (2) to maintain equipment at current levels of efficiency. Pacific Dunlop shall also provide to the purchaser or purchasers of the Canton facility a non-exclusive, perpetual license to use any and all patents currently used in the production of industrial gloves at the Canton facility. Pacific Dunlop shall also provide for twelve (12) months following the dates of divestiture under Sections IV.A and IV.B, or by the trustee appointed pursuant to Section V, if requested by the purchaser or purchasers, any technical assistance required to manufacture and package such gloves and maintain such equipment, for which Pacific Dunlop will be compensated in an amount equal to the salaries, benefits, and out of pocket expenses incurred in providing such services. Pacific Dunlop shall also provide to the purchaser or purchasers of the Canton facility identification of all customers to whom industrial gloves manufactured at the Canton facility were sold since January 1, 1987 and the types of industrial gloves sold to each.

D. Pacific Dunlop shall provide to the purchaser or purchasers of Ansell Granet identification of all customers to whom industrial gloves manufactured by Ansell Granet were sold.

E. Unless plaintiff otherwise consents, divestiture under Sections IV.A and IV.B, or by the trustee, shall be accomplished in such a way as to satisfy plaintiff, in its sole determination, that the Canton facility and Ansell Granet can and will be operated by the purchaser or purchasers as viable, ongoing businesses engaged in the production of industrial gloves. Divestiture under Sections IV.A and IV.B, or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that (1) The purchase or purchases are for the purpose of competing effectively in the sale of industrial gloves in the United States and (2) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the sale of industrial gloves in the United States.

F. Without the consent of the purchaser or purchasers, Pacific Dunlop shall not offer, for six (6) months following the dates of divestiture under Sections IV.A and IV.B, or by the trustee, employment to employees currently employed at the Canton facility or Ansell Granet.

G. Within one (1) month of the divestiture under Section IV.B, or by the trustee, Pacific Dunlop shall notify customers to whom industrial gloves manufactured at the Canton facility were sold since January 1, 1987 that (1)

Industrial gloves they purchased from Edmont were manufactured at the Canton facility and (2) the Canton facility was sold to the purchaser or purchasers.

H. At the time of divestiture under Section IV.B, or by the trustee, Pacific Dunlop shall provide to the purchaser or purchasers of the Canton facility a nitrile formulation for use at the Canton facility which will enable such purchaser or purchasers to manufacture nitrile gloves of a quality, manufacturing efficiency, and yield substantially equivalent to the nitrile gloves currently manufactured by Edmont at the Canton facility.

I. Pacific Dunlop or the trustee shall be entitled to require that the purchaser or purchasers of the assets to be divested be precluded from representing in any manner that the nitrile gloves which it or they manufacture or sell utilize any Edmont nitrile formulation, and that such purchaser or purchasers be precluded from manufacturing or selling a green nitrile glove for seven (7) years following the date of divestiture under Section IV.B, or by the trustee.

J. Pacific Dunlop shall remove the formers currently in place at the Canton facility and replace them with new formers of a quality substantially equivalent to the current formers and suitable for the manufacturer of all products currently manufactured at the Canton facility. Pacific Dunlop has ordered such new formers and will install them as soon as they are received. At the option of the purchaser or purchasers, the closing of the divestiture of the Canton facility may be deferred until the new formers are installed.

K. Pacific Dunlop or the trustee shall be entitled to require the issuance of a royalty free perpetual license to Pacific Dunlop to use, after the divestiture provided for in the Final Judgment, any and all know-how, trade secrets, and other intellectual property provided to the purchaser or purchasers of Ansell Granet and the Canton facility, except for the name "Granet" and other divested Ansell Granet trademarks, copyrights, trade dress, and trade names.

L. Defendants shall take all reasonable steps to accomplish quickly the divestiture and all other obligations contemplated by this Final Judgment.

V. Appointment of Trustee

A. In the event that Pacific Dunlop has not divested all of its interests required by Sections IV.A and IV.B by six (6) months from the filing of this Final Judgment the Court shall, on application of the plaintiff, appoint a trustee to

effect the remainder of the divestiture required by Sections IV.A and IV.B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Sections IV.A and IV.B. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the rights of Pacific Dunlop in Sections IV.I and IV.K, and subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Pacific Dunlop shall not object to a sale by the trustee pursuant to the provisions of this Final Judgment on any grounds other than the trustee's malfeasance. Any such objections by Pacific Dunlop must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has provided the notice required under Section VI.

B. If Pacific Dunlop has not divested all of its interests required by Sections IV.A and IV.B by five (5) months from the filing of this Final Judgment, plaintiff and Pacific Dunlop shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture. Pacific Dunlop shall attempt to agree upon one of the nominees to serve as the trustee. If plaintiff and Pacific Dunlop are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify the Court of the person upon whom plaintiff and Pacific Dunlop agreed, and the Court shall appoint such person as the trustee. If plaintiff and Pacific Dunlop are unable to agree within that time period, plaintiff shall furnish the Court the names of each party's nominees. The Court may hear plaintiff and Pacific Dunlop as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Pacific Dunlop, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to Pacific Dunlop and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and

terms of the divestiture and the speed with which it is accomplished.

D. Pacific Dunlop shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business or businesses to be divested, and Pacific Dunlop shall develop financial or other information relevant to such business or businesses as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Upon the request of the trustee, Becton, Dickinson shall provide reasonable assistance and records and documents within its possession or control to aid the trustee in accomplishing the divestiture of the Canton facility. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with plaintiff and Pacific Dunlop and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to plaintiff and Pacific Dunlop, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VI. Notification

A. Pacific Dunlop or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Pacific Dunlop. The notice shall set forth the details of the proposed transactions and list the name, address, and telephone number of each person not previously identified who offered or

expressed an interest or desire to acquire any ownership interest in the Canton facility or Ansell Granet, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Pacific Dunlop or the trustee shall furnish the additional information within fifteen (15) days after receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, plaintiff shall notify in writing Pacific Dunlop and the trustee, if there is one, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing Pacific Dunlop and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Pacific Dunlop's limited right to object to the sale under Section V.A. Upon objection by the plaintiff the proposed divestiture shall not be accomplished. Upon objection by Pacific Dunlop under Section V.A., the proposed divestiture shall not be accomplished unless approved by the Court.

B. On the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, Pacific Dunlop shall deliver to plaintiff a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the period preceding the delivery of the report made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Canton facility or Ansell Granet, the name, address, and telephone number of that person and a detailed description of each previously unreported contact with that person during that period. Pacific Dunlop shall maintain full records of all efforts made to divest the Canton facility and Ansell Granet.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior consent of the plaintiff.

VIII. Preservation of Assets

A. Pacific Dunlop shall preserve, hold, and continue to operate as going businesses the Canton facility and Ansell Granet. Pacific Dunlop shall discontinue any efforts to integrate the

operation of Ansell Granet into the operation of any other business unit owned or affiliated with Pacific Dunlop. Pacific Dunlop shall use all reasonable efforts to maintain the Canton facility and Ansell Granet as viable and active competitors in the market for the production and sale of industrial gloves.

B. Pacific Dunlop shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), assets required to be divested pursuant to Sections IV.A and IV.B, except that any component of such assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. Pacific Dunlop shall provide and maintain sufficient working capital to maintain the Canton facility and Ansell Granet as viable, ongoing businesses.

D. Pacific Dunlop shall preserve the assets required to be divested pursuant to Sections IV.A and IV.B except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records of the Canton facility and Ansell Granet, and Pacific Dunlop shall continue to maintain such documents, books, and records until the dates of divestiture.

E. Except in the ordinary course of business, Pacific Dunlop shall refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel employed in connection with the Canton facility or Ansell Granet, and shall refrain from transferring any employee employed at the Canton facility or Ansell Granet without the prior approval of plaintiff.

F. Defendants shall refrain from taking any action that would jeopardize the sale of the Canton facility or Ansell Granet.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Fully authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General

or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal officers, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement

of compliance herewith, and for the punishment of any violations hereof.

XI. Termination

This Final Judgment will expire on the fifth anniversary of the completion of the divestitures required herein.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 15, 1989, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, challenging the proposed acquisition of the United States assets of Edmont, Inc. ("Edmont"), a wholly owned subsidiary of Becton, Dickinson and Company ("BD"), by Pacific Dunlop Holdings Inc. ("PDH"). The complaint alleges that the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. 18.

Both PDH and Edmont are major United States suppliers of various types of dipped supported and unsupported industrial gloves designed to protect hands from cuts and abrasions and environmental, chemical, and biological agents and/or to protect products from hand-borne contamination. Dipped unsupported industrial gloves are liquid proof and chemical resistant ("liquid proof") gloves that are made from latex (natural rubber) or a synthetic material such as nitrile, neoprene, or polyvinyl chloride ("PVC"); these gloves may be flock-lined, but do not employ any other lining. Dipped supported industrial gloves are made of cloth or other lining material coated with latex or a synthetic material such as those identified above; these gloves may or may not be liquid proof depending on whether they are designed to allow for hand ventilation.

The complaint names as defendants Edmont, PDH, and BD and alleges that the effect of the merger may be substantially to lessen competition among products that sell in the United

States the following types of industrial gloves: dipped unsupported nitrile gloves, liquid proof dipped supported latex gloves, liquid proof dipped supported nitrile gloves, liquid proof dipped supported neoprene gloves, and liquid proof dipped supported PVC gloves.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

Under the terms of a Purchase and Sale Agreement dated February 13, 1989 between PDH and Edmont, PDH proposes to acquire all of Edmont's industrial glove operations in the United States. Under the Agreement, PDH is to pay a purchase price of approximately \$192 million and assume certain of Edmont's liabilities.

PDH and Edmont both produce for sale in the United States a broad line of industrial gloves. In 1988, PDH's total industrial glove sales in the United States were approximately \$26 million. Through its subsidiary Ansell Inc., PDH sells in this country unsupported nitrile gloves manufactured by its affiliate Ansell Glove Company Ltd. in the United Kingdom. Another PDH subsidiary, Ansell Granet, Inc., produces at a plant in Snow Hill, North Carolina dipped supported gloves coated with latex, nitrile, neoprene, and PVC.

Edmont's total United States sales of industrial gloves were approximately \$65 million in 1988. It produces unsupported nitrile gloves at plants in Canton, Ohio and Juarez, Mexico, and liquid proof dipped supported gloves at other plants in Ohio, North Carolina, Louisiana, and Canada.

The complaint alleges that the production and sale of dipped unsupported nitrile gloves, of liquid proof dipped supported latex gloves, of liquid proof dipped supported nitrile gloves, of liquid proof dipped supported neoprene gloves, and of liquid proof dipped supported PVC gloves, each constitutes a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act. The several types of liquid proof dipped supported and unsupported industrial gloves each have differing degrees of suitability for the many uses for

industrial gloves. As between liquid proof dipped supported and dipped unsupported industrial gloves, the former offer superior protection from cuts and abrasion, while the latter have superior protection from cuts and abrasion, while the latter have superior tactile and dexterity properties. Within the unsupported and liquid proof supported categories, each type of coating material offers protection against certain chemicals or other toxic or corrosive substances superior to other types. A small but significant and nontransitory increase in the price of any of above identified types of industrial gloves is not likely to cause a significant number of customers to substitute any other type of industrial glove, or any other product.

For each of the above types of industrial gloves, firms that produce and sell that type in the United States compete with each other for sales throughout the country. The United States is, as alleged in the complaint, a section of the country and a relevant geographic market, within the meaning of section 7 of the Clayton Act.

The complaint also alleges that the above markets for industrial gloves are highly concentrated and would become substantially more concentrated as a result of the proposed acquisition of Edmont by PDH. In 1988, total United States sales of dipped unsupported nitrile gloves were approximately \$28.7 million. Edmont and PDH, through its subsidiary Ansell Inc., are respectively the first and fifth largest competitors in this market; based on 1988 United States sales data, Edmont and PDH market shares are, respectively, about 43 percent and 4.4 percent. Based on market shares derived from United States sales of all firms in the market, the proposed acquisition would increase the Herfindahl-Hirschman Index ("HHI") by about 380 points to over 3200.

Total United States sales in 1988 of all dipped supported latex, nitrile, neoprene, and PVC gloves were approximately \$80 million. Edmont and PDH, through its subsidiary Ansell Granet Inc., are the second and third leading United States sellers of dipped supported latex gloves, with shares of 1988 sales of that type of glove at about 30 percent and 5 percent respectively; the first and third leading United States sellers of dipped supported nitrile gloves, with shares of about 54 percent and 6 percent; the first and fourth leading United States sellers of dipped supported neoprene gloves, with shares of about 44 percent and 7.7 percent; and among the top five leading United States

sellers of dipped supported PVC gloves, with shares of about 35 percent and 5.6 percent.

A number of producers of dipped supported latex, nitrile, neoprene, and PVC gloves make more than one type of such gloves, and most producers can make more than one type using the same production equipment. Further, all producers of dipped supported gloves can make both liquid proof and non-liquid proof gloves on the same equipment. Accordingly, for purposes of assessing the competitive structure of these markets, and thus analyzing the effect of the acquisition on competition in the markets, it is appropriate to aggregate the capacity resulting from all such equipment that can be used by producers to make more than one type of glove.

Based on 1988 United States sales of all dipped supported gloves, each of the above identified markets for liquid proof dipped supported gloves is highly concentrated and would become substantially more concentrated as a result of the proposed acquisition of Edmont by PDH. In each market, the proposed acquisition would increase the HHI by at least 300 points to over 2800.

As alleged in the complaint, successful entry into any of the above described United States markets for dipped supported and unsupported industrial gloves is difficult and time-consuming because of the cost and time required to perfect the production technologies, to construct necessary production facilities, and to develop the substantial distributor relationships necessary to compete effectively in the United States.

III. Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed acquisition of Edmont by PDH may be substantially to lessen competition, in violation of section 7 of the Clayton Act, in the United States markets for the manufacture and sale of unsupported nitrile industrial gloves, liquid proof dipped supported latex industrial gloves, liquid proof dipped supported nitrile industrial gloves, liquid proof dipped supported neoprene industrial gloves, and liquid proof dipped supported PVC industrial gloves. As described below, the provisions of the Final Judgment are designed to prevent the anticompetitive effects of the proposed acquisition in each of these markets.

To eliminate the competitive threat posed by the proposed acquisition in the unsupported nitrile glove market, the proposed Final Judgment requires PDH to divest, subject to certain exclusions,

any and all interest that it has or shall acquire in real, personal, and intellectual property used in the production or sale of industrial gloves at Edmont's manufacturing facility in Canton, Ohio (the "Canton facility"). Edmont currently manufactures unsupported nitrile gloves at this facility. It is the government's judgment that an acceptable purchaser of the Canton facility will compete effectively in the United States market for unsupported nitrile gloves, and will supplant the loss of PDH in this market.

Excluded from this divestiture are patents, trademarks, trade names, copyrights, trade dress, nitrile formulations, research and development, and currently-used formers. However, the proposed Final Judgment requires PDH to provide the purchaser of the Canton facility with a non-exclusive and perpetual license to practice any and all patents pertinent to production at the facility, a nitrile formulation that will enable the purchaser to produce gloves of a quality, manufacturing efficiency, and yield substantially equivalent to that currently achieved by Edmont at the facility, and replacement formers of comparable quality to those currently used at the facility.

To preserve the current level of competition in the liquid proof dipped supported glove markets, the Final Judgment requires PDH to divest any and all interest that it has or shall acquire in its subsidiary Ansell Granet Inc. This divestiture would include all real, personal, and intellectual property used in Ansell Granet's industrial glove production and sales. Ansell Granet currently manufactures liquid proof dipped supported gloves and is PDH's sole source of such gloves for the United States markets. An acceptable purchaser of this plant thus will fully replace PDH as a competitor in these markets.

Under the Final Judgment, PDH is to complete both divestitures within six months of the filing of the judgment, and if it fails to do so, the court will appoint a trustee to accomplish the divestitures. In the latter eventuality, only the trustee would have the right to sell the assets to be divested, and PDH would be required to pay for all of the trustee's sale related expenses. If the trustee does not accomplish the divestitures within six months of appointment, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may

include extending the trust or the term of the trustee's appointment.

The Final Judgment provides that both the Canton facility and Ansell Granet must be divested in such a way as to satisfy the United States that those assets can and will be operated by the purchaser(s) as viable, ongoing businesses that can compete effectively in the sale of industrial gloves in the United States. In this regard, it affords the United States an opportunity to review any proposed sale to effect the divestitures prior to consummation. If the United States requests information from Pacific Dunlop to assess a proposed sale, the sale may not be consummated until at least 15 days after Pacific Dunlop supplies the information. Upon objection by the United States, a proposed divestiture may not be completed. Until the required divestiture has been accomplished, Pacific Dunlop must preserve and maintain the Canton facility and Ansell Granet as ongoing and economically viable businesses.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate

comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, The Curtis Center, Suite 650, 7th & Walnut Streets, Philadelphia, PA 19106.

VI. Alternatives to the Proposed Final Judgment

An alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to seek preliminary and permanent injunctions against the consummation of the acquisition of Edmond by PDH. The United States rejected this alternative because the divestitures in the proposed Final Judgment should prevent the acquisition from having significant anticompetitive effects in any of the industrial glove markets alleged in the complaint.

With respect to the liquid proof dipped supported glove markets, Ansell Granet is the only operation affiliated with Pacific Dunlop that manufacturers dipped supported industrial gloves, and its divestiture provides all the relief that could be obtained by the United States with respect to those markets. Regarding the unsupported nitrile glove market, the United States considered as an alternative requiring PDH's affiliate, Ansell Glove Company Ltd., to divest its assets devoted to this market, which are located in the United Kingdom; PDH is not otherwise engaged in the production of unsupported nitrile gloves. However, the United States concluded that the sale of Edmond's Canton facility would better enable the purchaser to compete for sales in the United States than a sale of the Ansell Glove Company operations. While the two facilities have roughly equal production capacities, Ansell Glove Company's manufacturing plant is located in England, and therefore its ability to compete in the United States is to some extent subject to fluctuating foreign exchange rates and other potential relative disadvantages of supplying the United States from overseas facilities.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed acquisition alleged in the complaint. Although the judgment may not be entered until the criteria established by the APPA (15 U.S.C. 15 (b)-(h)) have been fully satisfied, the public will benefit immediately from the judgment's provisions because the

defendants have stipulated to comply with its terms pending its entry by the court.

VII. Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectively submitted

Richard S. Rosenberg,

Mary Ann Ryan, Attorneys, Antitrust Division, Department of Justice, Middle Atlantic Office, The Curtis Center, Suite 650, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-7417.

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BILLING CODE 4410-01-M

Office of Justice Programs

Grants and Cooperative Agreements; Availability

June 15, 1989.

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Notice of the availability of funds and request for applications to provide training and technical assistance to state and local victim service programs.

SUMMARY: The Office of Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice is seeking applications to provide national scope training and technical assistance that will assist crime victim service providers and managers of programs to provide quality and timely services to crime victims. The Office for Victims of Crime announces the availability of \$150,000 for the support of up to five regional training seminars.

The statutory authority for this notice is found in the Victims of Crime Act of 1984 (VOCA), Public Law 98-473, as amended by the Children's Justice and Assistance Act of 1986 (CJA), Public Law 99-401, and as amended by the Anti-Drug Abuse Act of 1988, Title VII, Subtitle D, of Public Law 100-690. The Victims of Crime Act has been codified at 42 U.S.C. 10601, *et seq.*

DATE: Applications for these funds must be received by August 7, 1989.

ADDRESS: Address applications to the Office for Victims of Crime, 633 Indiana

Avenue NW., Washington, DC 20531.
Attention: Cynthia Darling.

FOR FURTHER INFORMATION CONTACT:
Cynthia Darling, (202) 724-5947. (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1988, President Reagan signed into law the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Title VII. Subtitle D, of this Act reauthorized the Victims of Crime Act (VOCA) through Federal Fiscal Year 1994.

The Office for Victims of Crime was established in 1984 within the U.S. Department of Justice to serve as the Federal focal point for victim issues and to administer the Victims of Crime Act of 1984, as amended. For the first time Section 1411 of the Act legislatively established an Office for Victims of Crime within the Justice Programs, U.S. Department of Justice. The Director is appointed by the President and reports to the Attorney General through the Assistant Attorney General for the Office of Justice Programs, and has final authority for all grants, cooperative agreements, and contracts awarded by the Office for Victims of Crime. The Director is responsible for administering funds made available under sections 1402, 1403, and 1404 of the Act. Funds made available under Section 1402(d)(2) (A)(ii) and (D)(ii) are utilized by the States to support a variety of eligible crime victim assistance programs. In any given year, approximately 1,500 programs receive partial funding support with VOCA funds.

Section 1402(d)(2) (A) states that "Of the first \$100,000,000 deposited in the Fund in a particular fiscal year * * * 1% shall be available for grants under section 1404(c) * * *". Section 1404(c)(1) of the Act states that the Director shall make grants (A) for training and technical assistance services to eligible crime victim assistance programs; and (B) for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

Of the 1% available for this purpose, up to one-half of one percent is authorized for training and technical assistance and at least one-half of one percent is authorized for victims of Federal crimes. This year a major portion of these funds will be allocated for services to victims of Federal crimes on Indian reservations. The remainder of the funds will be available for training and technical assistance for eligible victim assistance programs.

Over the last three years the Office of Justice Programs has awarded funds to provide training to victim assistance

program staff. Grant awards to organizations included but were not limited to the National Organization for Victim Assistance, the National Sheriff's Association, the National Victims Center, the Medical University of South Carolina, Parents of Murdered Children and Other Survivors of Homicide Victims, the South Dakota Coalition Against Domestic Violence and Sexual Assault, the National Association of Crime Victim Compensation Boards, the National Organization of Black Law Enforcement Executives, the National District Attorneys' Association, and the National Woman Abuse Prevention Project. Funds supporting these projects have come from the Victims of Crime Act and the Justice Assistance Act.

Statement of Problem

Although crime has been a problem of great national concern for decades, it only has been in the last ten years that the plight of the crime victim has been brought to the Nation's attention. Shortly after assuming office, President Reagan established the President's Task Force on Victims of Crime. He was concerned that the scales of justice were out of balance and that victims of crime were not being treated with the dignity, fairness and courtesy which they deserved. After holding six public hearings the Task Force issued a final report in December 1982, making 68 recommendations on how treatment of crime victims could be improved. Out of that report came the following Federal initiatives: (1) The establishment of the Office for Victims of Crime, and (2) passage of the Victims of Crime Act of 1984.

Since the enactment of VOCA there has been a considerable increase in the number and type of victim assistance programs operating in the United States. As a result, there is an ongoing need for technical assistance and training for victim service program staff. Funds will be made available to meet this need through this announcement.

Purpose

The OVC is making available \$150,000 for the development and presentation of regional training conferences for crime victim assistance service providers.

Program Description

One grant will be awarded for the purpose of developing and presenting up to five regional training conferences throughout the United States. There are no attendance restrictions, however, preference should be given to VOCA-funded program staff in cases where space or type of training might necessitate limitation of attendance.

The training should utilize existing training material and, at a minimum, should cover the provision of direct services such as specialized service needs of crime victims, crisis intervention, counseling, providing emergency services, and assistance in criminal justice proceedings. The program should be designed for approximately two to three-day sessions to accommodate an audience of about 120 people. The training should include appropriate written materials for participants, and an overview of VOCA and VOCA Guidelines for victim assistance and victim compensation. Since cost effectiveness as well as the ability to initiate the training program in a timely manner will be primary selection factors, it is essential that development costs be minimized. A variety of training materials for this purpose have been developed in recent years and should be utilized.

Sites for training sessions should be selected to accommodate geographical diversity and reasonable travel and per diem costs. Direct service providers will be asked to pay for their own travel and lodging, with the cost of the training paid by the technical assistance project. The development, publication and dissemination of brochures/flyers announcing the regional training conferences will be carried out by the grantee. The cost of such activities will be the responsibility of the grantee and should be described fully in the budget.

A method by which conference attendees can evaluate the regional training conferences should be included by the applicant in the program description. The applicant should submit a proposed agenda for the training and proposed site locations. Applicants should identify and include resumes of qualified and capable staff who have expertise in victim services.

Selection Criteria

The selection of the grantee will be based on:

1. Evidence of an in-depth knowledge of the subject matter and current issues in service delivery. (20 points)
3. Experience in conducting national level training for direct service providers and evidence of proven ability to provide high quality training results. (15 points)
4. A detailed budget that demonstrates the cost-effectiveness of the project, including the use of regional training resources. (20 points)
5. Project director and training staff which have expertise in state-of-the-art victim assistance intervention. Resumes

of proposed staff and all trainers should be included. (20 points)

6. Proposed training curriculum that shows ability to begin training in a timely manner, proposed sites for training and projected schedule for each training conference. (25 points)

Funds Available

The sum of \$150,000 will be available from the Office for Victims of Crime for the purpose of conducting up to five regional training conferences for direct service providers to address the training and technical assistance needs of crime victim assistance programs.

Time Period and Award Amount

The grant will be for twelve months and will cover 100% of the project costs (no matching funds required).

Eligible Applicants

Eligible applicants may be from public or private non-profit organizations with knowledge of subject matter, expertise and experience in providing training on a nationwide basis for victim assistance direct service providers. The Office for Victims of Crime will accept applications from eligible organizations and will award one grant.

Submission Deadlines

Applications must be received by August 7, 1989. Mailed applications must be postmarked by this date. However, applications which are hand delivered must be received by the close of business (5:00 p.m.) at the Office for Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531, on or before the deadline date.

Applications

Applicants should submit three (3) copies of their completed Proposal by the deadline established above, each signed in the original.

Applications must include:

A. A completed and signed Federal Assistance application on the current Standard Form 424. Copies of the required forms, and any information or clarification regarding them, may be obtained by writing or calling the Office for Victims of Crime, State Compensation and Assistance Division, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-5947.

B. An abstract of the full proposal, not to exceed one page.

C. A program narrative of not more than twenty (20) double-spaced typed pages which should include:

1. A clear, concise statement of the issues surrounding the problem area and a discussion of the relationship of the

proposed work to the existing training literature;

2. A clear statement of the project objectives including an estimate of the number of service providers to be trained, proposed training sites, a list of major milestones of events, activities, products, and a time-table for the operation of the program;

3. A clear statement which describes the approach and strategy to be utilized to complete each of the tasks identified in the program description. Applicants should indicate the contents of proposed training packages and how the organization plans to maximize attendance at training conferences;

4. The proposed organization and management plan to be used including, at a minimum, the staff of the project, and the time commitments of key staff to individual project tasks. A project director must be identified, with a clear indication of the amount of time to be devoted to the project;

5. Description of how the project will be evaluated;

6. Description of the proposed training curriculum, with topics listed and time scheduled for each topic.

D. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted item cost. Any anticipated subcontracts must include a separate budget.

E. Copies of vitae for the professional staff which summarize education, clinical, research and training experience, and bibliographic information related to the proposed work.

F. Detailed technical material that supports or supplements the description of the proposed effort, but is not integral to it, should be included in an appendix.

All three copies of the application must be sent or hand delivered to: Office for Victims of Crime, State Compensation and Assistance Division, 633 Indiana Avenue NW., Washington, DC 20531, by the deadline established above.

FOR FURTHER INFORMATION CONTACT: Cynthia Darling, State Compensation and Assistance Division, (202) 724-5947.

Information concerning model programs and practices is available from the National Criminal Justice Reference Service, 1600 Research Boulevard, Rockville, Maryland 20850, (301) 251-5000, and the National Victims Resource Center, Box 6000, Rockville, Maryland 20850, (301) 251-5519.

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89-14970 Filed 8-23-89; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-51]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: July 13, 1989, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, Room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology. The Committee, chaired by Mr. Phil M. Condit, is comprised of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda: July 13, 1989

8 a.m.—Opening Remarks.

8:30 a.m.—Program Plans.

10 a.m.—Committee Discussion.

12:15 p.m.—NASA/Federal Aviation Administration Cooperative Activities Review.

1:25 p.m.—National Aero-Space Plane Update.

2:10 p.m.—Discussion on Current Study Topics.

3:30 p.m.—Discussion on New Study Topics.

5 p.m.—Adjourn.

June 19, 1989.

John W. Gaff,

Advisory Committee Management Officer,
National Aeronautics and Space
Administration.

[FR Doc. 89-14972 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Notice (89-50)]

**NASA Advisory Council (NAC), Space
Systems and Technology Advisory
Committee (SSTAC); Meeting****AGENCY:** National Aeronautics and
Space Administration.**ACTION:** Notice of meeting.**SUMMARY:** In accordance with the
Federal Advisory Committee Act, Pub.
L. 92-463, as amended, the National
Aeronautics and Space Administration
announces a forthcoming meeting of the
NASA Advisory Council, Space Systems
and Technology Advisory Committee.**DATES:** July 19, 1989, 8:30 a.m. to 3:30
p.m.**ADDRESSES:** National Aeronautics and
Space Administration, Federal Building
10B, Room 625, 600 Independence
Avenue, SW., Washington, DC 20546.**FOR FURTHER INFORMATION CONTACT:**
Ms. Catherine L. Smith, Office of
Aeronautics and Space Technology,
National Aeronautics and Space
Administration, Washington, DC 20546,
202/453-2367.**SUPPLEMENTARY INFORMATION:** The
NAC Space Systems and Technology
Advisory Committee was established to
provide overall guidance and direction
to the space research and technology
activities in the Office of Aeronautics
and Space Technology (OAST). The
Committee, chaired by Dr. Joseph F.
Shea, is comprised of 20 members. The
meeting will be open to the public up to
the seating capacity of the room
(approximately 40 persons including the
Committee members and other
participants).*Type of Meeting:* Open.*Agenda:* July 19, 1989

8:30 a.m.—Opening Remarks.

8:45 a.m.—Program Plans.

11:50 a.m.—Aeronautics and Space
Engineering Board Space Technology
Summer Workshop Discussion.

1 p.m.—Space Facilities Study.

1:30 p.m.—Ad Hoc Review Team Final
Reports.3 p.m.—Ad Hoc Review Team Status
Update.

3:20 p.m.—Summary Session.

3:30 p.m.—Adjourn.

June 19, 1989.

John W. Gaff,

Advisory Committee Management Officer,
National Aeronautics and Space
Administration.

[FR Doc. 89-14973 Filed 6-23-89; 8:45 am]

BILLING CODE 7510-01-M

**NUCLEAR REGULATORY
COMMISSION**

[Docket No. 50-312]

**Sacramento Municipal Utility District;
Environmental Assessment and
Finding of No Significant Impact**The U.S. Nuclear Regulatory
Commission (The Commission) is
considering issuance of an exemption
from the requirements of 10 CFR Part 20,
Appendix A, footnote d-2(c), to the
Sacramento Municipal Utility District,
who holds Facility Operating License
No. DPR-54, which authorizes operation
of the Rancho Seco Nuclear Generating
Station. Rancho Seco is a pressurized
water reactor located in Sacramento
County, California.**Environmental Assessment***Identification of the Proposed Action:*
The exemption from 10 CFR Part 20
would allow the use of a radioiodine
protection factor of 50 for Mine Safety
Appliances (MSA) GMR-I canisters at
Rancho Seco.*The Need for the Proposed Action:*
The exemption is needed to facilitate
refueling operations at Rancho Seco by
reducing the time and person-rem
exposure required to complete tasks that
require respiratory protection.*Environmental Impacts of the
Proposed Action:* There are no
environmental impacts of the proposed
action. The proposed exemption
involves a change in the installation or
use of the facility's components located
within the restricted areas as defined in
10 CFR Part 20. The staff has determined
that the proposed exemption involves no
significant increase in the amounts, and
no significant change in the types, of
any effluents that may be released
offsite and that there is no significant
increase in individual or cumulative
occupation radiation exposure.With regard to potential non-
radiological impacts, the proposed
exemption involves systems located
entirely within the restricted areas as
defined in 10 CFR Part 20. It does not
affect non-radiological plant effluents
and has no other environmental impact.
Therefore, the Commission concludes
that there are no significant non-
radiological environmental impactsassociated with the proposed
exemption.*Alternative to the Proposed Action:*
We have concluded that there is no
measurable environmental impact
associated with the proposed
exemption. The principal alternative
would be to deny the requested
exemption. This would not reduce
environmental impacts of plant
operation.*Alternative Use of Resources:* This
action does not involve the use of
resources not previously considered in
the Final Environmental Statement
(operating license) for Rancho Seco
Nuclear Generating Station.*Agencies and Persons Consulted:* The
NRC staff reviewed the licensee's
request and did not consult other
agencies or persons.**Findings of No Significant Impact**The Commission has determined not
to prepare an environmental impact
statement for the proposed exemption.Based upon the foregoing
environmental assessment, we conclude
that the proposed action will not have a
significant effect on the quality of the
human environment.For further details with respect to this
action, see the request for exemption
dated November 17, 1988, which is
available for public inspection at the
Commission's Public Document Room,
2120 L Street NW., Washington, DC, and
at the Martin Luther King Regional
Library, 7340 24th Street Bypass,
Sacramento, California.Dated at Rockville, Maryland this 13th day
of June 1989.

George W. Knighton,

Director, Project Directorate V, Division of
Reactor Projects—III, IV, V and Special
Projects Office of Nuclear Reactor
Regulation.

[FR Doc. 89-15030 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

**Records for the Millstone Nuclear
Power Station; Request for Repository
Library****AGENCY:** Nuclear Regulatory
Commission.**ACTION:** Relocation of the records for the
Millstone Nuclear Power Station.**SUMMARY:** Notice is hereby given that
the U.S. Nuclear Regulatory Commission
(NRC) intends to move the Local Public
Document Room (LPDR) records
collection for the Northeast Nuclear
Energy Company's Millstone Nuclear
Power Station from the Waterford
Public Library, Waterford, Connecticut,

to an as yet undetermined library. On July 7, 1988, the NRC published notice in the *Federal Register* (53 FR 25554) inviting public comments on possible LPDR sites. No comments were received from libraries interested in maintaining the collection. The collection currently contains 150 linear feet of documents. Since no library expressed interest in maintaining the current collection, the collection is being offered in a modified format. Documents dated prior to 1981 would be in hardcopy format and consist of approximately 50 linear feet. Documents dated 1981 forward would be on microfiche, with weekly microfiche supplements for new documents. Documents in the microfiche file would be identified using NRC-furnished computer hardware and software to access the NRC on-line document data base. The purpose of this notice is to invite public comment on possible LPDR sites for this modified collection.

DATE: Comment period expires July 26, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona Souder, Local Public Document Room Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-7537, for Toll-Free 800-638-8081.

SUPPLEMENTARY INFORMATION: Since August 1971, the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut, has served as the NRC Local Public Document Room repository for records relating to the Millstone Nuclear Power Station. The document collection includes essentially all publicly-available records considered by the NRC in the licensing and regulation of the Millstone Nuclear Power Station. At the present time, the collection takes up approximately 150 linear feet of shelf space in addition to some microfiche and microfiche equipment.

Due to the large size of the collection and difficulty in finding a new location with adequate available space, the documents dated 1981 and forward would be provided in microfiche format, leaving a hardcopy collection of approximately 50 linear feet.

In order to locate specific documents in the microfiche file, the Agency would provide a computer with modem and printer to be used to access its on-line document data base.

Among the factors the NRC will consider in selecting a new location for the collection are the following:

(1) Whether the institution is an established document repository located within 50 miles of the nuclear facility and has a history of impartially serving the public;

(2) The physical facilities available, including shelf space, patron workspace, and copying equipment;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) Nature and extent of related research resources, such as government documents;

(5) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(6) The proximity of the library to existing user groups of the collection, if known;

(7) The background and experience of the library staff in searching on-line data bases.

Public comments are requested of libraries in the vicinity of the Millstone Nuclear Power Station that might be considered for selection as the new location for this NRC local public document room collection.

Dated at Bethesda, Maryland, this 21st day of June 1989.

For the Nuclear Regulatory Commission,
John D. Philips,
Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89-15035 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-348A, 50-364A]

Alabama Power Co.; Joseph M. Farley Nuclear Plant, Units 1 and 2 Antitrust Settlement

On June 29, 1984, the Alabama Electric Cooperative, Inc. (AEC) petitioned the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206 to enforce Antitrust License Condition No. 2 which is incorporated in the Joseph M. Farley

Nuclear Plant, Units 1 and 2 (Farley) licenses. On June 16, 1986, the Director of the Office of Nuclear Reactor Regulation issued a Notice of Violation that cited eleven areas of non-compliance with Antitrust License Condition No. 2. After extensive discussions and negotiations between AEC, Alabama Power Company (APCo) and the NRC staff, AEC and APCo entered into a joint settlement agreement dated April 25, 1989 that fully resolves the original controversy which led AEC to petition the NRC in June of 1984.

Discussion

The antitrust license conditions attached to the Farley licenses resulted from the NRC's antitrust construction permit review in the late 1970's and subsequent court proceedings in the early 1980's. The license condition in question required APCo to offer to sell to AEC an undivided ownership interest in the Farley plant. AEC's petition was precipitated by the inability of APCo and AEC to mutually agree upon the terms and conditions of the proposed sale.

On the basis of the AEC petition and the subsequent staff analysis of the allegations raised by AEC, the Director of the Office of Nuclear Reactor Regulation (Director) issued a Director's Decision and Notice of Violation (NOV) against APCo on June 16, 1986. The Director's Decision denied AEC's petition in part and granted it in part. The NOV cited eleven of the fourteen allegations raised by AEC in its petition as areas of non-compliance by APCo with Antitrust License Condition No. 2. Subsequent to the issuance of the NOV, APCo and AEC entered into protracted negotiations that ultimately resulted in the parties consummating a Purchase and Ownership Agreement on November 18, 1988 for the sale by APCo to AEC of an ownership interest in APCo's James H. Miller, Jr. Steam Electric Generating Plant, Units 1 and 2. This Purchase and Ownership Agreement allowed AEC to substitute its rights to purchase a portion of the Farley plant, provided for by Farley Antitrust License Condition No. 2, for the rights to purchase a portion of APCo's James H. Miller, Jr. coal-fired power plant.

APCo and AEC have concluded that the settlement agreement summarized above resolves the dispute between the two parties that was characterized in AEC's request for a 2.206 enforcement action filed before the NRC on June 29, 1984.

As a result of the consummation of this settlement agreement, the staff, by this Notice, hereby completes its review of this matter.

Dated at Rockville, Maryland, this 20th day of June 1989.

For the Nuclear Regulatory Commission.
Darrel A. Nash,

Acting Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15031 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-445A]

Texas Utilities Electric Co. et al.; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the antitrust construction permit review of Unit 1 of the Comanche Peak Steam Electric Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Comanche Peak Steam Electric Station construction permits to TU Electric Co., et al., and the consummation of the settlement agreement before the Commission, the staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in northeastern and north central Texas, the events relevant to the Comanche Peak construction permit review and the antitrust settlement subsequent to the construction permit review.

The conclusion of the staff analysis is as follows:

Prior to the antitrust settlement agreement before the Nuclear Regulatory Commission (NRC), competition for the purchase or sale of power and energy and related ancillary services in the Texas bulk power market was primarily limited to intrastate power transactions. This intrastate power network has remained intact for many years—notwithstanding the fact that some power entities doing business on the perimeter of the state of Texas as well as some systems within the state have expressed interest in interstate bulk power transactions for a number of years. Although the Texas bulk power market has remained primarily intrastate in nature, there have been several changes since the NRC settlement in 1980 that have provided competitive stimuli to this market.

The change that has had the greatest impact in the Texas bulk power market has been the implementation of the joint settlement agreement, i.e., before the NRC and the Federal Energy Regulatory Commission. This settlement agreement required TU Electric, et al., to make their transmission facilities more available to power systems in Texas and thereby promote competition between intrastate and interstate power systems with the construction of two DC transmission lines. Although both of the direct current (DC) transmission ties with the Southwest Power Pool (SWPP) have not been completed, the North tie has been completed and the Central and South West operating systems are exchanging power and energy over this tie. Plans have been developed to expand the North tie (as contemplated in the settlement agreement) to accommodate a significant power transfer by a Texas co-generating entity.

Capacity (15 percent) in both DC interties has been reserved for non-owners who wish to engage in firm power transactions in the interstate market. Moreover, wheeling to, from or over the DC interties is now an available option to many power systems in Texas.

To remedy a growing need to redistribute power from co-generators concentrated in industrialized pockets in the state, the Texas Public Utility Commission promulgated rules requiring mandatory transmission or wheeling of co-generated power in Texas. These rules have enabled corporate entities, which heretofore have not participated in the Texas bulk power market, to market their by-product power and energy, i.e., barriers to entry into the production and sale of bulk power in Texas have been lowered as a result of the newly adopted wheeling rules.

Increased coordination and cooperation among bulk power suppliers has resulted in a more open market in the state of Texas. TU Electric has implemented numerous transmission and scheduling agreements which have enabled a variety of power systems to shop for alternative power throughout the northern portion of the state.*

*Although there have been allegations made recently by an electric cooperative power system in TU Electric's service area that TU Electric has not

Moreover, a computer controlled bulletin board, advising all members of the Electric Reliability Council of Texas (ERCOT) of available power and energy in the state is now in place, making "shopping" for power and energy easier for more power systems in the state—thereby enabling power systems to better meet the individual needs of their customers.

All types of power entities in Texas, i.e., municipal, cooperative and investor owned, are beginning to explore joint generation projects both within and outside the state. The concept of interstate planning and participation in interstate power projects is a new one for most Texas power entities. Although the movement to interstate cooperation and competition is still in its embryonic stages in Texas, this movement was contemplated by and provided for in the antitrust settlement agreement before both the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission. (The settlement agreement provides for requests for capacity increases and ownership purchases in the DC interties at intervals of every 3 years beginning in June of 1986 and lasting until June of 2004.) It is anticipated that this movement toward increased cooperation and competition will continue among intrastate power systems within Texas and also between intrastate power systems wishing to engage in joint power supply planning and power supply transaction across state borders.

Although there are still physical impediments to complete synchronous operations between most Texas power entities and systems outside of Texas, i.e., there are no major alternating current interconnections between ERCOT and the SWPP, the settlement agreement provided power systems inside of Texas, as well as in surrounding states, the opportunity to exchange power and energy and engage in bulk power transactions.

The staff views the settlement agreement as a major first step in opening up power supply options to a broad spectrum of power entities in ERCOT and the SWPP. The staff's analysis of the changes in the licensees' activities since the antitrust settlement has not identified any changed activity envisioned by the Commission as set forth in its *Summer* decision. Consequently, the staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Comanche Peak Steam Electric Station.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.

provided transmission and coordination services upon request, staff believes, in light of the Commission's *Summer* decision, that the issues raised by the cooperative are not germane to the Commission's "significant change" review, but may be more appropriately addressed in the context of a compliance proceeding.

Signed on June 16, 1989 by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the *Federal Register*. Requests for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, this 19th day of June 1989.

For The Nuclear Regulatory Commission,
Darrel A. Nash,
Acting Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

Summary Statement

Director's Findings—The Director of the Office of Nuclear Reactor Regulation has made a finding of "no significant change" regarding the antitrust aspects of the licensees' application in Docket No. 50-445A. Requests for reevaluation are due thirty days from the date of publication in the *Federal Register*.

[FR Doc. 89-15034 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc. Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NFP-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2, located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated December 22, 1988, the amendment would revise the Technical Specification Section 3/4.3.2 and the associated Tables. The table entries previously listed in a section entitled "Containment

Isolation" are separated into two sections, one for Primary Containment and one for Secondary Containment isolation functions.

Revisions to table entries, table notations and nomenclature are made to either more clearly reflect the plant configuration, remove duplication or ambiguity, or reflect the new section of the table. Provisions have been included to allow routine testing of the Reactor Water Cleanup system without necessitating removal of the system from service. In addition, the definition of Channel Calibration is revised to better reflect standard industry practice.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 26, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-352-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained.

absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 22, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 19th day of June 1989.

For the Nuclear Regulatory Commission.
Lawrence A. Yandell,

*Acting Director, Project Directorate III-1,
Division of Reactor Projects—III, IV, V &
Special Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 89-15033 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors (NACS); Meeting

The purpose of the National Advisory Committee on Semiconductors, is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on July 6, 1989 at Science Applications International Corporation, 1555 Wilson Blvd., 7th Floor, Rosslyn, Virginia 8:00 a.m. The proposed agenda is:

- (1) Briefing of the Committee on its organization and administration.
- (2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.
- (3) Discussion of composition of panels to conduct studies.

A portion of the July 6 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will

involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Hazel Houston, at (703) 556-7130, prior to 3 p.m. on July 5, 1989. Mrs. Houston is also available to provide specific information regarding time, place and agenda for the open session.

Barbara J. Diering,

*Special Assistant, Office of Science and
Technology Policy.*

June 20, 1989.

[FR Doc. 89-14943 Filed 6-20-89; 3:45 pm]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26946; File No. SR-AMEX-89-13]

Self-Regulatory Organization's; Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Joint-Exchange Margin Monitoring Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1989 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") hereby proposes to adopt margin monitoring procedures for stock and index options that are to be uniform with all other options self-regulatory organizations. Such procedures will permit the rapid implementation of uniformly agreed upon changes in margin requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposed change provides for Exchange participation in a formal joint-exchange program for monitoring the adequacy of margin levels and a system for the rapid implementation of any margin changes. Pursuant to the terms of the program, on a quarterly basis, the exchanges would jointly engage in a statistical review of data relating to (i) The volatilities of all securities and indices underlying exchange-traded options for the previous five and one-half (5½) months; and (ii) the frequency distributions of the percentage price movements of the underlying instruments for the most recent five and one-half (5½) month period to determine the degree of coverage provided by the current margin levels. Further, margin levels would be monitored daily through the calculations of implied volatilities for all underlying securities and broad-based indices.

Under the proposed plan, options margin levels will be considered adequate when the current margin is sufficient to cover between 92.5% and 97.5% of all seven-day price changes during the five and one-half (5½) month period and between 87.5% and 92.5% for the most volatile quarter of all equity options. A margin increase will be considered warranted when the current

level of margin provides less coverage than either standard described above. Similarly, a margin decrease will be considered warranted when the coverage is greater for both standards. Any changes in the level of margin would be made across the board for a product group, i.e., for all stock options and/or index options. Changes would be in 1% increments with no change of less than 2%. Ordinarily, changes shall not be made in two consecutive quarters and shall not be greater than 5% in any one quarter. When the statistical review indicates that a margin change should be considered, other relevant matters such as current market conditions, member firm views, and implied volatility are also to be evaluated. The specific methodology for such statistical reviews and the conditions under which a change in margin requirements would be warranted is set forth in Exhibit 1.

Exchange representatives along with those of other exchanges have worked with the SEC staff on the development of an effective margin monitoring mechanism. In addition, the SEC staff has approved a procedure whereby if all exchanges are in agreement, a change in margin requirements will become effective upon filing and implemented at the next month's rollover.

The proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange in that the proposed change is designed to maintain adequate options levels which will provide financial protection to the securities industry. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee on the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

June 19, 1989.

Exhibit 1—Quarterly Review of Option Margin Levels

1. Following each three month period as specified below frequency distributions shall be calculated based upon seven (7) business day interval percentage price changes for all of the stocks underlying listed options (defined as issued and guaranteed by the Options Clearing Corporation), and for each index underlying listed index options, for every trading day during the previous five and one half (5½) month

period. All reviews shall be conducted on a quarterly basis, encompassing a five and one half (5½) month time period, beginning the first (1st) business day of the review period and ending with the tenth (10th) business day of the sixth (6th) month. For example, distributions would be calculated for the period of September 1, 1988 through February 14, 1989, and then again for the period of December 1, 1988 through May 14, 1989 and so on.

2. Cumulative distributions of percentage price changes shall be calculated for the option stocks combined and the broad market indices. In addition, the volatilities of the individual stocks shall be determined for the review period, and the stocks ranked by volatility from lowest to highest. The cumulative distribution of seven (7) business day, percent price changes for option stocks shall also be determined for the 25% of those stocks having the highest volatilities.

3. The degree of coverage based upon the existing option margin levels shall be determined for each of the groups listed above.

4. Margin levels shall be monitored daily through calculations of implied volatilities for each broad-based index and equity security that underlie listed options. An applicable margin percentage is then calculated based upon a twenty (20) day moving average, with the most recent days having the greater weight.

5. For stock options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations or less than an 87.5% level of coverage of stocks in the highest volatility quartile during the five and one half (5½) month review period.

A margin decrease shall be considered warranted when the current margin add-on provides a level of coverage in excess of 97.5% for all observations and over a 92.5% coverage level for stocks in the highest volatility quartile during the five and one half (5½) month review period.

6. For index options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations during the five and one half (5½) month review period.

A margin decrease shall be considered warranted where the current margin add-on provides a level of coverage in excess of 97.5% for all observations during the five and one half (5½) month review period.

7. Margin changes shall be made uniformly for a product group (i.e., stock

options and industry index options; broad-based index options). Margin changes shall be made in 1% increments, with no change being less than 2%. Margin changes shall not be made ordinarily in two (2) consecutive quarters and shall not exceed 5% in any one quarter.

8. Margin changes shall be filed pursuant to section 19(b)(3)(A) of the 1934 Act through a rule filing, which shall be made no later than five (5) business days subsequent to the close of the relevant review period. Margin changes shall become effective the business day immediately following the next month's expiration. Margin changes effected pursuant to a 19(b)(3)(A) rule filing shall not result in margin levels lower 5% and 10% for index and equity options, respectively.

9. In determining whether to effect a margin change, in addition to the frequency distribution results, other relevant matters shall be considered such as current market conditions, member firm views and margin levels implied from options premiums where the results differ from the historical frequency distributions by two percent (2%) or more.

[FR Doc. 89-15038 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26947; File No. SR-AMEX-88-28]

**Self-Regulatory Organization;
American Stock Exchange, Inc. Order
Approving Proposed Rule Change
Relating to Solicitation of Options
Transactions**

On November 21, 1988, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to regulate the manner in which members outside the trading crowd may solicit other members outside the trading crowd to participate in an options transaction.

The proposed rule change was noticed in Securities Exchange Act Release No. 28703 (April 7, 1989) 54 FR 15063 (April 14, 1989). No comments were received on the proposed rule change.

The Exchange proposes to permit solicitation of members outside the

trading crowd (both on and off-floor) under conditions that provide members of the trading crowd with equal and fair access to information regarding solicited orders and the opportunity to participate in such orders. Specifically, if the solicited party is a broker dealer (other than a registered trader), the members of the trading crowd must receive the same information about an options order that is disclosed to the solicited party. After members of the trading crowd have been given a reasonable opportunity to accept the bid or offer, the member may cross all or any remaining part of the order with the solicited broker dealer.

If a member desires to solicit a member that is a registered trader outside the trading crowd, the member must expose the order to the trading crowd twice. First, before any outside solicitation is permitted, the member must disclose to the trading crowd the same information regarding the order that will be disclosed to the solicited registered trader. Assuming the trading crowd does not accept the order, a registered trader may be solicited outside the trading crowd. However, after such solicitation the order must be announced, including any changes from the previously announced order, to the trading crowd. As with broker dealer solicited transactions, the trading crowd is given a reasonable opportunity to accept the bid or offer, before the solicited registered trader accepts (or the member crosses on his behalf), all or any remaining part of such order. Additionally, the proposed rule change requires that all orders and tickets subject to the solicitation rule be marked as specified by the Exchange.

The Exchange proposes these amendments in order to reconcile the practice of solicitation outside the trading crowd with the rules and practices of the auction market. During the past year, the Exchange has reviewed the manner in which members outside the trading crowd are solicited in options transactions. The Exchange recognizes that solicitation outside the trading crowd, in some circumstances, may add depth and liquidity to the market for some option classes. However, the Exchange seeks to ensure that members of trading crowds have the opportunity to participate in any solicited transactions on the same terms as the solicited party. Specifically, the Exchange believes that the trading crowd must have adequate time to digest the terms of the order to be able to decide whether to participate in the transaction. The Exchange believes the proposed rule change, by providing equal and fair access to order

information, will permit both the registered trader and the solicited party the same opportunity to provide the best available price and participate in the transaction.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6.³ The proposed rule change provides a fair procedure for incorporating additional sources of liquidity from outside of the trading crowd with the auction market structure of the options trading crowd. Specifically, affording members of the trading crowd the opportunity to participate in all transactions, including solicited orders, ensures that customer orders will receive the price protections accorded by the centralized auction market features of the trading crowd. At the same time, the proposal will enable broker-dealers to seek other sources of liquidity if trading crowd interest proves insufficient.

Currently, the absence of Exchange rules that uniformly regulate and monitor solicited transactions would make it difficult for the Exchange to ensure that the trading crowd always has the opportunity to participate in solicited transactions. The lack of clear Exchange rules governing such activity creates uncertainty for floor traders and floor brokers, and hinders solicitation of additional trading interest. The Exchange proposal provides clear guidelines, and strengthens the ability of the Exchange to ensure that customer orders receive full consideration by the trading crowd. Moreover, the proposed rule change will enable the Exchange to monitor more effectively transactions where orders have been solicited outside the trading crowd. Such data will permit the Exchange to examine the effect that solicited transactions have on customer orders and the trading crowd. Finally, the provisions of the proposed rule, along with other Amex rules, will ensure that transactions involving solicitations are not prone to abuse.⁴

¹ 15 U.S.C. 78f (1982).

² See, e.g., Amex Rule 111(c) (Prohibits a registered trader from effecting a transaction in which he has an interest and executing as broker an off-floor order in the same stock in the same trading session) and Amex Rule 150 (Prohibits members from executing transactions for their own account while they personally hold or have knowledge that a member of his organization hold an unexecuted order in that security on the same side of the market).

³ 15 U.S.C. 78a(b)(1) (1982).

⁴ 17 CFR 240.19b-4 (1987).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁵ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,
Secretary.

Dated: June 19, 1989.

[FR Doc. 89-15039 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26951; File No. SR-OCC-89-04]

Filing of Proposed Rule Change by the Options Clearing Corporation; Relating to Index Option Escrow Receipts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change proposes to convert the index option escrow receipt pilot program to permanent status and to effect certain amendments to the index option escrow receipt form. For example, the index option escrow receipt as revised eliminates bankers' acceptances and certificates of deposit as permissible collateral under the receipt and permits OCC, in certain situations, to close out the short position represented by the escrow receipt. The rule change also proposes to increase the limitation on the amount of all escrow receipts that an issuing custodian bank may have outstanding at any one time. Other technical amendments are made as well.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is threefold: (1) To convert the index option escrow receipt program from pilot to permanent status; (2) to effect certain amendments to OCC's index option escrow receipt; and (3) to increase the limitation on the amount of stock option and index option escrow receipts that an issuing custodian bank may have outstanding at any one time.

On August 13, 1985, the Securities and Exchange Commission (the "Commission") approved a pilot program permitting OCC Clearing Members to deposit with OCC an "index option escrow receipt" in lieu of OCC margin requirements on short index call options held in the Clearing Member's customers' amount. These escrow receipts permit a Clearing Member's customer to "cover" a short index call option position by depositing with an OCC-approved custodian bank any combination of cash, cash equivalents or marginable equity securities. The index option escrow receipt, which is issued by the bank, constitutes its acknowledgment that it holds the deposited property for OCC's benefit and will not release the property without OCC's written consent.

OCC is requesting that the index option escrow receipt program, as amended herein, be converted from pilot to permanent status because it has achieved its purpose of encouraging broader participation by institutional investors in the index options markets. Since the program was provisionally approved, it has proven to be a practical and cost-effective means of enabling these investors to manage their portfolio risk by writing index call options. Additionally, the various safeguards built into the receipt (such as a custodian bank's obligation to monitor the value of the deposited property and report to OCC if the property's value falls below certain maintenance levels) adequately protect OCC from default by a Clearing Member or its customer.¹

¹ One major options exchange has given extensive treatment to the benefits of this program. See Chicago Board Options Exchange, *Market Index Option Escrow Receipt Pilot Report* (filed with the Commission on February 8, 1987) [hereinafter referred to as "Pilot Report."]

In its review of the program, OCC identified certain provisions of the index option escrow receipt that in its judgment required amendment or additional enhancement. Some changes were suggested by a consortium of escrow receipt banks having large custodial businesses. Many of these changes will effect not only the index option escrow receipt, but OCC's stock option escrow receipt and its proposed index participation ("IP") escrow receipt as well. Conforming amendments will be made to those escrow receipts in separate filings.²

(1) Increase in the Limitation on the Total Amount of Escrow Receipts Issuable by a Custodian Bank

Under the stock option, index option and proposed IP escrow receipts, a custodian bank must certify to OCC that the gross value of the collateral held pursuant to all of these escrow receipts does not exceed 25% of the equity attributable to all outstanding shares of capital stock issued by the bank. Three years ago, at the request of OCC's custodian banks, an alternative, less restrictive formula was adopted permitting the banks to calculate the 25% limitation based on the intrinsic value (or "in-the-money" amount) of the options represented by outstanding escrow receipts. See Securities Exchange Act Release No. 34-23244 (May 16, 1986).

In OCC's discussions with certain of its custodian banks, the principal change to the index option escrow receipts suggested by them was that this equity-based cap be eliminated entirely. These banks argued that despite the alternative calculation the limitation placed undue restrictions on their custodial businesses. They cited to the fact that bank regulators placed stringent duties on them to segregate deposited property. They noted further the fact that most of the customers using these escrow receipts are large institutional investors that could meet their obligations on an assignment to the short position represented by an escrow receipt, even if the bank failed to

² The stock option escrow receipt for short call options on equity securities operates almost identically to the index option escrow receipt. However, unlike the latter receipt, only the specific security underlying short call options may be deposited as collateral under the stock option escrow receipt.

Pending before the Commission is OCC's proposal to accept escrow receipts to cover short positions in index participations ("IPs"). The same type of collateral permitted under the index option escrow receipt would be permitted under the IP escrow receipt. See SR-OCC-88-9 (filed with the Commission on December 19, 1988).

⁵ 15 U.S.C. 78s(b)(2) (1982).

⁶ 17 CFR 200.30-3(a)(12) (1986).

properly segregate collateral. Some of the banks indicated that it would be economically infeasible for them to continue issuing escrow receipts without an increase in capacity.

At this time, OCC cannot endorse a completion elimination of a cap on the issuance of these instruments. OCC believes that some limitation is necessary to prevent an excessive concentration of escrow receipts in one bank, thereby limiting OCC's known financial exposure in the event that a single bank failed and did not properly segregate the collateral underlying outstanding escrow receipts.

However, to encourage the banks' continued participation in the escrow receipt programs, OCC has determined to increase the cap from 25% to 100% of the equity attributable to the outstanding shares of a bank's capital stock. Accordingly, the first paragraph of the index option escrow receipt is amended to reflect this increase. Conforming amendments to the stock option escrow receipt will be made in a separate filing; the IP escrow receipt filing pending before the Commission will be similarly amended.

OCC believes that this increase can be effected without unnecessary financial risk to OCC. First, OCC's potential exposure to loss under these instruments is a highly contingent one because at least three events must occur simultaneously before OCC would sustain a loss under an escrow receipt: (i) The Clearing Member submitting the escrow receipt must fail; (ii) the custodian bank must fail; and (iii) the custodian bank must have failed to either segregate the deposited property or properly mark to market the value of the property. Second, to further ensure that the deposited property is properly segregated, OCC requires its custodian banks to provide OCC annually with an opinion letter from the bank's outside auditors on the adequacy of the bank's system of internal accounting control for issuing escrow receipts and segregating deposited property.

(2) Eliminate Certain "Cash Equivalents" as Acceptable Collateral Under the Index Option Escrow Receipt

The index option escrow receipt currently permits the deposit or "cash equivalents" as collateral. Cash equivalents are defined in § 220.8(a)(3)(ii) of Regulation T and include short-term U.S. government securities, negotiable bank certificates of deposit ("CD's") and bankers' acceptances. OCC believes that continued acceptance of the latter two instruments as collateral would present undue risk to OCC because OCC has no

means of ensuring that the issuers of that paper are financially sound. Unlike the custodian banks issuing the escrow receipts themselves, which are required to submit quarterly financial statements to OCC, OCC receives no financial information on the banks issuing CD's and bankers' acceptances. Moreover, if an issuer of those instruments fails and the instruments become worthless, the custodian bank would be liable to OCC for any loss sustained as a result of OCC's inability to collect under those instruments.³

Given this potential exposure on OCC's part, the index option escrow receipt, Rule 1801(b)(2) and Rule 1801(f) are amended to eliminate CD's and bankers' acceptances as permissible collateral, while still permitting the deposit of short-term U.S. government securities valued at the lesser of par value or 100% of current market value.

(3) Provide OCC with Additional Close-Out Authority for Short Positions Covered by Index Option Escrow Receipts

OCC presently has no authority to close out the short options positions of a suspended Clearing Member that are covered by stock option or index option escrow receipts. Instead, under OCC Rule 1106(b)(2) these positions must be maintained by OCC "subject to the instructions of the suspended Clearing Member or its representative." This presents no financial risk to OCC when the covered short position involves an equity option, since the specific underlying security deliverable upon an assignment to that position must be deposited as collateral under the stock option escrow receipt. However, that risk does exist with respect to short index option positions backed by an index option escrow receipt. Upon Clearing Member suspension, OCC could sustain a loss by being unable to close out that covered position even though the value of the collateral backing the position is declining precipitously.

To protect OCC in this situation, amendments to the index option escrow receipt, Rule 1106(b)(2), Rule 1801(d) and Rule 1801(e) permit OCC to close out the short position covered by the index option escrow receipt and to draw on the receipt in an amount equal to the cost of the closing transaction plus any commissions, financing costs and other charges incurred by OCC in connection therewith. OCC would be able to take this action only in the limited situation where: (1) The value of the collateral

deposited under the index option escrow receipt fall below the maintenance level, which is 50% of the product of (a) the number of option contracts covered by the escrow receipt and (b) the aggregate current index value of the underlying index; (2) OCC requested the Clearing Member that filed the receipt to deposit additional margin in respect of the short positions of the short positions covered by the escrow receipt; and (3) OCC suspended the Clearing Member.

(4) Other Changes

As presently written, the index option escrow receipt requires the custodian bank to certify that it will not subject "nor permit the Customer to subject" the deposited property in any lien or encumbrance. The banks asserted that they have no legal ability to prevent their customer from attempting to encumber those assets and therefore are being required to certify something that is legally impossible for them to comply with. Consequently, the index option escrow receipt is amended to remove that clause. Other technical amendments are made to that certification, but without changes in substance.

The index option escrow receipt is amended to clarify that the written notice that the custodian bank must give to OCC when the value of the deposit has fallen below maintenance levels may be given to OCC by facsimile.

The remaining changes to the rules and the index option escrow receipt are technical refinements, which are self-explanatory.⁴ For example, the references to the "market value" of deposited property in Rule 1801 is changed simply to "value," since the method for valuing deposited property is provided for in Rule 1801(f). The reference in Rule 1801(c) to the defining term "initial position value" is eliminated because the term is not used elsewhere in the rule.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934 (the "Act") because it would foster broader institutional participation in and contribute to the liquidity of the market for index options, while still providing

³ Moreover, few customers utilize these instruments as collateral. See *Pilot Report* at p. 7.

⁴ Conforming amendments to the first paragraph of the index option escrow receipt require the custodian bank to include the value of the collateral backing outstanding IP escrow receipts in computing its limitations on the amount of escrow receipts that it can issue. As the proposed IP escrow receipt is still pending Commission approval, those changes will not be implemented unless and until the IP escrow receipt is approved.

adequate safeguards for the protection of OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule changes and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning File No. SR-OCC-89-4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will be also available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15037 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26944; File No. SR-PSE-89-09]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Appeal of Floor Citations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ITEM 1. Text of the Proposed Rule Change

The PSE proposes to amend Rule XX, Section 11, governing the procedure for the appeal of floor citations. Brackets indicate language to be deleted; italics indicate new language.

[Hearings and Review] Appeal of Floor Citations

Sec. 11. This Section provides the following procedures for persons aggrieved by Exchange action taken pursuant to the provisions of the Constitution and Rules of the Exchange, [wherein] for which action a member has [received a fine or] been sanctioned via floor citation, and applies for an opportunity to [be heard and/or to have the complained of action reviewed] make an oral presentation or to have the matter reviewed on the papers alone. (This Section shall not apply to disciplinary action taken pursuant to Section 3 herein, non-disciplinary action taken pursuant to Section 7 (a) herein, or to an action in Arbitration, from which there is no review.)

(a) Submission of Application to Exchange.

A person who is aggrieved by any action of the Exchange within the scope of this Section and who desires [to have

an] the opportunity [to be heard] to make an oral presentation with respect to such action or to have such action reviewed on the papers alone shall file a written application with the [offices of the] Compliance [Surveillance] Department[s], within five days after notification that such action has been taken. The notification submitted by the Exchange shall state the specific grounds for the action taken by the Exchange, and shall notify the applicant of his right to make an oral presentation or to have the matter reviewed on the papers alone. The application shall state the [action] complained of action, the specific reasons why the applicant takes exception to such action, and the relief sought. In addition, the application shall indicate whether the applicant desires to make an oral presentation, in which event it shall be considered a "request for a hearing", or to proceed only upon the existing and/or any additional documents or materials, in which event it shall be considered a "request for a review on the papers". [intends to submit any additional documents, statements (oral or written), arguments or other material in support of the application, in which event it shall be considered a request for hearing and review. If the applicant does not indicate an intention to submit any such additional material, the application shall be considered a request for review only] (Hereinafter, the terms "hearing" and "review on the papers" shall be referred to jointly as the "Proceeding(s)").

(b) [Parties and other Participants] Intervention.

Any person associated with the applicant whose interest might be affected by the [p] Proceeding shall be entitled to participate as a party. Further, in the discretion of the [p]Panel appointed pursuant to paragraph (c) hereof or of the Board of Governors ("Board"),

any other person whose interests might be affected by the [p]Proceeding may be permitted to [be a limited participant] intervene in the [p]Proceeding, [which may include] and may be granted such rights of a party as either the [p]Panel or the Board, as the case may be, deems appropriate. Any determination of the [p]Panel as to participation in the [p]Proceedings is subject to appellate review by the Board at the close of the [p]Proceedings or, in the Board's discretion, during the course of the [p]Proceedings.

*(c) Procedure Following Application for Hearing and/or Review on the Papers.**(1) Appointment of the Panel*

Applications for hearing and/or review on the papers shall be referred to the Exchange Committee [of the Exchange involved in the action complained of] responsible for the complained of action. The appropriate Committee shall appoint a [hearing] [p]Panel composed of three members of the Committee or other approved members. The [p]Panel so appointed shall be furnished with all materials considered by the Exchange or the Committee in connection with its initial action. Parties to the Proceedings shall be notified of the composition of the Panel. Any objection to the composition of the Panel must be submitted within 5 business days of receipt of the notification regarding the composition.

[(2) Parties to the proceedings shall be informed of the composition of the panel and shall be furnished with a list of the materials made available to the panel. The applicant shall, in addition, be furnished a concise statement of the specific grounds for the action by the Exchange or by a Committee of the Exchange with respect to which hearing and review is sought, and the applicant shall be notified of his right to make an oral appearance to the panel.]

[(3)](2) Additional Submissions and Notice

Within fifteen business days after receipt of the [information] notification regarding composition of the panel, as referred to in [sub]paragraph one (1) above, [all parties to the proceedings] the applicant, if the application is for a review on the papers, shall submit to the [p]Panel any additional documents, statements, arguments or other materials. [and may] The Exchange will then have fifteen days to submit to the Panel any additional documents, statements, arguments or other materials in response to the applicant's submission. If the application is for a hearing, the parties may, at this time, request an opportunity [to make an oral presentation to the panel, which request, if made, shall be granted. A request shall also be made at this time] to call witnesses to the hearing; [which] the [p]Panel, in its discretion, may or may not grant this request. [A record shall be kept of any such oral presentation.] In the event of a hearing, each party shall furnish to the Panel and to the other parties, not less than five business days in advance of the scheduled hearing date, copies of all documentary evidence such party intends to present at the hearing. Parties shall be given at

least 15 business days notice of the time and place of the hearing.

(3) Conduct of the Proceeding

Whether the Proceeding is a hearing or a review on the papers alone, the Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the Proceeding. The formal rules of evidence shall not apply. In the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses pursuant to paragraph (c)(2), present documentary evidence, cross-examine witnesses and present closing arguments. The Panel shall have the right to question all parties and witnesses to the Proceeding. The Panel may also request the production of documentary evidence and witnesses. No member or person associated with a member, or employee of the Exchange, shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel during the course of the Proceeding. All parties are entitled to be represented by counsel who may participate fully in the Proceeding. In the event of a hearing, a transcript of the hearing shall be made and shall become part of the record.

(4) The Decision of the Panel

Within 30 days after the date of the hearing or the review on the papers, the Panel shall render its decision. The Panel may confirm, reverse or modify in whole or in part the decision of the Exchange Committee, and may make any findings or conclusions which in its judgment are proper. The decision of the [p]Panel [following the hearing] shall be in writing, [and shall be sent to the parties to the proceedings. Such decision] shall contain a concise statement setting forth the specific [grounds on which the decision of the panel is based as well as a statement setting forth the reasons supporting the conclusions of the panel] findings and conclusions of the Panel and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

(5) Appellate Review by the Board of the Panel's Decision

The decision of the [p]Panel shall be subject to appellate review by the Board either on the Board's [its] own motion within thirty days after issuance (or upon presentation to the Board, whichever is later), or upon written [application] petition of any party to the [p]Proceeding filed within fifteen business days after issuance. Such appellate review of the Proceedings

shall be in accordance with paragraph (d) hereof.

*(d) Procedure Following [Application] Petition for Appellate Review by the Board.**(1) Additional Submissions and Appointment of the Appellate Review Panel*

[Applications] Petitions for appellate review of the Proceeding pursuant to paragraph (c)(5), shall be referred to the Board which shall be furnished with all material considered by the Exchange[,] Committee or [p]Panel. Parties to the proceedings shall be furnished with a list of such material. [The applicant, if he has not already received such a statement, shall be furnished a concise statement of the specific grounds for the action by the Exchange or by a Committee of the Exchange with respect to which hearing and review is sought.] Parties may submit a written statement [argument] to the Board and may request an opportunity to make an oral [argument] presentation before the Board; the Board, in its discretion, may grant or deny [such a] the request for oral presentation. In the absence of a request for such a presentation, or at any time, the Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, [If the Board grants the request,] the matter shall be referred to an appropriate Appellate Review [p]Panel appointed by the Board. [and a record shall be kept of any oral presentation that is made. Where an application only for review is made pursuant to paragraph (c)(5), the Board may, upon its own motion or upon the request of a party, consider the application as an application for hearing and review and refer it to an appropriate Review Panel for resolution.] A transcript shall be made of any oral presentation and shall become part of the record.

(2) Decision of the Appellate Review Panel

Appellate Review by the Board pursuant to paragraph (c)(5) shall be made upon the material furnished it by the Exchange[,] Committee or [p]Panel as well as by the parties, and shall be made after such further proceedings as the Board shall order. [Based upon such record] [t]The Board may confirm, reverse or modify in whole or in part the decision of the Committee or [p]Panel and may make any findings or conclusions which in its judgment are proper [on the record]. The decision of the Board shall be in writing, shall

contain a concise statement of the [specific grounds for the decision,] findings and conclusions of the Board and the reasons in support thereof, and shall be sent to the parties to the [p]Proceedings.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

The PSE proposes to amend Rule XX, Section 11 in order to provide clarity as to the precise procedure by which floor citations are reviewed, and to facilitate the systematic, complete and orderly functioning of the review proceedings. Although many of the changes are non-substantive and minor in nature, the more substantive amendments are discussed below.

The amendment clarifies that there exists two different procedures by which floor citation sanctions may be reviewed. At the election of the member, they may be reviewed by way of oral presentation (hearing) or solely on the papers. As it presently exists, the Rule does not precisely distinguish nor define these procedures, thus causing certain confusion as to the process for each. Furthermore, the proposed amendment clarifies and distinguishes the above described initial review from the second appeal by the Board, introduced in Section 11(c)(5) of the Rule. In order to clarify that this is, in fact, a second review, the term "Board review" has been replaced with the terms "appellate review by the Board," or "appellate review of the Proceedings."

In revised Section (2), entitled "Additional Submissions and Notice," the amendment specifies and distinguishes the precise submissions which must be made when the appeal is conducted by hearing or on the papers. Furthermore, since the Exchange performs in the capacity of a "respondent" to the applicants appeal, this Section provides the Exchange with the opportunity to respond to a submission made on the papers; to allow

otherwise would force the Exchange to rebut arguments which have not yet been made.

The proposed amendment also adds a section which delineates the manner by which the Proceedings are conducted. This addition, revised Section (3), provides the Panel with the power to call and question parties and witnesses, demand the production of documents, and rule on the admissibility of evidence. This section also specifies the order of procedure for a review conducted by way of oral presentation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section,

450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary,

June 19, 1989.

[FR Doc. 89-15040 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 26945; File No. SR-PSE-89-10]

Proposed Rule Change by Pacific Stock Exchange Inc., Relating to Margin Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 17, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ITEM 1. Text of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or "Exchange") proposes to amend Rule XI, Section 2(d), by adding Commentary .01, and Rule XXI, Section 16(a), by adding Commentary .06, as set forth below. (Italics indicates additions.)

Rule XI.—Margins

Sec. 2(d)

(1) through (8) No change.

Commentary:

.01 The Exchange has established and filed with the Securities and Exchange Commission option margin monitoring procedures which are uniform with all other options self-regulatory organizations. The Exchange may increase or decrease option margins requirements through a rule filing made pursuant to Section 19(b)(3)(A) of the Act, provided the option margin changes are within the parameters established by such

procedures. The Exchange's Chairman, or his designee, shall have the authority for determining changes to options margin levels in accordance with the parameters. Any modifications to the Exchange's option margin monitoring procedures shall be filed with the Securities and Exchange Commission.

Rule XXI.—Index Options Margins

Sec. 16(a) through (d) No change.

Commentary:

.01 through .05 No change.

.06 *Index options margins may be increased or decreased pursuant to Exchange Rule XI, Section 2(d).*
Commentary .01.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

The purposes of this rule change is to authorize the Exchange to modify index and equity option margin requirements based upon uniform option margin monitoring procedures filed with the Securities and Exchange Commission by the various options self-regulatory organizations. All modifications to option margin requirements will be effected pursuant to a rule filing under section 19(b)(3)(A) of the Act. The option monitoring procedures have been formulated to ensure that adequate option margin levels are maintained at all times and to provide the options self-regulatory organizations the ability to modify option margins on a timely basis using a consistent methodology. The monitoring procedures rely upon statistical analysis conducted on a quarterly basis. The analysis involves the computation of frequency distributions for seven (7) business day percentage price movements of the underlying instruments for the most recent five and one-half (5½) month period. The resulting figure will determine the degree of coverage the current margin levels have provided. This is an established methodology for determining the adequacy of options

margin levels. In addition, margin levels are monitored daily through the calculations of implied volatilities for all underlying securities and broad-based indices. Attached is a detailed explanation of the methodology for determining the adequacy of margin levels. The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 and, in particular, Section 6(b) thereof, in that the rule changes intent is to insure that option margin requirements are in effect which provide a reasonable level of financial protection to securities firms, public investors and does not permit the excessive use of credit for the purchase or carrying of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the *Federal Register* or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

June 19, 1989.

Jonathan G. Katz,
Secretary.

Quarterly Review of Option Margin Levels

1. Following each three month period as specified below, frequency distributions shall be calculated based upon seven (7) business day interval percentage price changes for all of the stocks underlying listed options (defined as issued and guaranteed by the Options Clearing Corporation), and for each index underlying listed index option, for every trading day during the previous five and one-half (5½) month period. All reviews shall be conducted on a quarterly basis, encompassing a five and one-half (5½) month time period, beginning on the first (1) business day of the review period and ending with the tenth (10) business day of the sixth (6) month. For example, distributions would be calculated for the period of September 1, 1988 through February 14, 1989, and then again for the period of December 1, 1988 through May 14, 1989, and so on.

2. Cumulative distributions of percentage price changes shall be calculated for the option stocks combined and the broad market indices. In addition, the volatilities of the individual stocks shall be determined for the review period, and the stocks ranked by volatility from lowest to highest. The cumulative distribution of seven (7) business days percent price changes for option stocks shall also be determined for the 25% of those stocks having the highest volatilities.

3. The degree of coverage based upon the existing option margin levels shall be determined for each of the groups listed above.

4. Margin levels shall be monitored daily through calculations of implied volatilities for each broad-based index and equity security, which underlies listed options. An applicable margin

percentage is calculated based upon a twenty (20) day moving average, with the most recent days having the greater weight.

5. For stock option, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations or less than a 87.5% level of coverage for stocks in the highest volatility quartile during the five and one-half (5½) month review period.

A margin decrease shall be considered warranted when the current margin add-on provides a level of coverage in excess of 97.5% for all observations and over a 92.5% coverage level for stocks in the highest volatility quartile during the five and one-half (5½) month review period.

6. For index options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations during the five and one-half (5½) month review period.

A margin decrease shall be considered warranted where the current margin add-on provides a level of coverage in excess of 97.5% for all observations during the five and one-half (5½) month review period.

7. Margin changes shall be made uniformly for a product group (i.e., stock options and industry index options; broad-based index options). Margin changes shall be made in 1% increments, with no change being less than 2%. Margin changes shall not be made ordinarily in two (2) consecutive quarters and shall not exceed 5% in any one quarter.

8. Margin changes shall be filed pursuant to Section 19(b)(3)(A) of the 1934 Act through a rule filing, which shall be made no later than five (5) business days subsequent to the close of the relevant review period. Margin changes shall become effective the business day immediately following the next month's expiration. Margin charges effected pursuant to a Section 19(b)(3)(A) rule filing shall not result in margin levels lower than 5% and 10% for index and equity options, respectively.

9. In determining whether to effect a margin change, in addition to the frequency distribution results, other relevant matters shall be considered such as current market conditions, member firm views and margin levels implied from options premiums where the results differ from the historical frequency distributions by two percent (2%) or more.

[FR Doc. 89-15041 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26943; File No. SR-PHLX-89-33]

**Self-Regulatory Organizations;
Proposed Rule Change by the
Philadelphia Stock Exchange, Inc.
Relating to the Responsibility To Make
Ten-Up Markets**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("PHLX" of the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend the Exchange Option Floor Procedure Advice A-11 ("Advice") by revising section (iii) thereof as follows (new language is italicized, deleted language appears in brackets):

(iii) If the availed upon best bid or offer is made by someone other than a floor trader and is not for at least ten contracts, participation for the additional contracts needed to meet the minimum ten contract requirement shall be *supplied at that same price* by the floor trader *quoting the previous* [At the next] best bid or offer (whichever the case). If more than one floor trader is quoting the next best bid or offer, participation for the additional contracts shall be decided upon agreement by those floor traders or otherwise divided proportionately among them.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of and
Statutory Basis for the Proposed Rule
Change**

The proposed rule change is intended to implement certain technical and clarifying language to a proposed Floor Procedure Advice that was recently filed with and approved by the Commission. See SR-PHLX-89-02; approved in Securities Exchange Act Release No. 26669 (March 27, 1989).

Option Floor Procedure Advice A-11 outlines the responsibility to make ten-up markets. The advice imposes a responsibility on specialist and registered Options Traders for ensuring that orders are filled to a minimum of ten contracts under certain circumstances, delineated in the Advice.

The Advice requires that, if the best bid or offer is made by someone other than a floor trader (e.g., a public customer limit order) and is not for at least ten contracts, the remainder of the participation needed to meet the ten contract requirement must be supplied by floor traders bidding or offering at the next best price. There has been some confusion as to whether this provision requires those traders to participate at the better price, or merely at their stated bid or offer. The above-mentioned revision to the Advice makes clear that the entire ten contract requirement must be satisfied at a single price; that is, at the best bid or offer in the market at that time.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring a minimum ten contract execution of public customer orders. Additionally, the proposal is consistent with section 11A(a)(i)(e) (ii) and (iv) of the Act in that it will promote fair competition among brokers and dealers and the practicability of brokers executing investors' orders in the best market.

**B. Self-Regulatory Organization's
Statement of Burden on Competition**

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

**C. Self-Regulatory Organization's
Statement on Comments on the
Proposed Rule Change Received From
Members, Participants or Others**

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15042 Filed 6-23-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17015; 811-609]

First Investors Option Fund, Inc.; Notice of Application

Date: June 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: First Investors Option Fund, Inc. ("Applicant").
Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on May 31, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 14, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549.
Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272-3009, or Brion Thompson, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a New York corporation, represents that its Board of Directors and the Board of Directors of First Investors High Yield Fund, Inc. ("High Yield Fund") (File No. 811-4674) unanimously adopted resolutions approving the reorganization of Applicant into High Yield Fund and the submission of the Agreement and Plan of Reorganization for approval by Applicant's shareholders. Thereafter, the SEC issued an order approving the reorganization. See, Investment Company Act Release No. 16553 (September 8, 1988).

2. On September 7, 1988, the Agreement and Plan of Reorganization by and between Applicant and High Yield Fund was approved by a vote of two-thirds of Applicant's shareholders. On November 1, 1988, Applicant

transferred all of its assets to High Yield Fund in a tax-free exchange for shares of common stock of High Yield Fund having an aggregate net asset value equal to the value of the transferred assets. On the same date, Applicant distributed the High Yield Fund shares acquired through the transfer to its shareholders on a pro rata basis in exchange for, and in cancellation of, the outstanding shares of Applicant.

3. Expenses incurred in connection with the reorganization were borne by Applicant and High Yield Fund based on the relative net asset value of the two funds, unless such expense was specifically allocated to either fund. All the expenses incurred in connection with the special meeting of shareholders of Applicant to consider approval of the reorganization and the payment of any state stock transfer stamps and taxes were assumed by Applicant.

4. Applicant does not currently propose to engage in any business activities other than those related to its dissolution. Applicant has no securityholders or assets, no debts or other liabilities, and is not a party to any litigation or administrative proceeding.

5. Finally, Applicant states that, upon receipt of the order requested from the SEC, Applicant will file a Certificate of Dissolution with the appropriate authority in the State of New York.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15044 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17013; 812-7255]

GW Sierra Trust Funds (Formerly, the GW Investment Funds) et al.

June 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval of offers of exchange under the Investment Company Act of 1940 ("1940 Act").

Applicants: GW Sierra Trust Funds ("Company"), Great Western Financial Securities Corporation ("GWFS") and on behalf of any future funds or series that hold themselves out to investors as related companies for purposes of investment and investor services and (i) have a common investment adviser or principal underwriter with the Company, or (ii) have an investment adviser or principal underwriter under

common control with the investment adviser or principal underwriter of the Company ("Additional Funds") (collectively, "Applicants").

Relevant 1940 Act Sections: Order requested under Section 6(c) for an exemption from 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1, and for approval under Section 11(a) of the 1940 Act.

Summary of Application: Applicants seek an order (i) permitting the assessment and waiver of a contingent deferred sales charge ("CDSL") on redemptions of certain of the Company's initial and future series of shares and (ii) approving certain offers of exchange on a basis other than relative net asset value.

Filing Date: The application was filed on February 10, 1989, and amended on May 22 and June 16, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicants in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, D.C. 20549. Applicants, 888 South Figueroa Street, Suite 1100, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker (202) 272-3033 or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Company is an open-end, diversified, management investment company organized as a Massachusetts business trust on February 22, 1989. On February 27, 1989, the Company filed a Notification of Registration on Form N-8A with the Commission, pursuant to Section 8(a) of the 1940 Act. A Registration Statement on Form N-1A

under the 1940 Act and the Securities Act of 1933 was filed on March 10, 1989. The Registration Statement has not yet been declared effective.

2. The Company is a series company that is currently composed of six series, the Growth and Income Fund, the U.S. Government Securities Fund, the California Tax Exempt Income Fund, the U.S. Government Money Market Fund, the California Tax Exempt Money Market Fund and the Global Income Money Market Fund (collectively, "Funds"). Shares of all the Funds are sold by GWFSC, which is registered as a broker-dealer under the Securities Exchange Act of 1934. Affiliates of GWFSC serve as the investment adviser and administrator to the various Funds.

3. The Applicants propose to (i) offer shares of each CDSL Fund subject to a CDSL (as discussed below) and offer shares of each Non-CDSL Fund without a sales charge, (ii) institute a plan of distribution in accordance with Rule 12b-1 under the 1940 Act ("Plan"), and (iii) provide the Company's shareholders with the right to exchange shares of any one Fund for shares of any other Fund.

4. Shares of the Growth and Income Fund, the U.S. Government Securities Fund and the California Tax Exempt Income Fund ("CDSL Funds") will be offered without an initial sales charge, but a CDSL will be imposed upon certain redemptions within four years after purchase. Shares of the U.S. Government Money Market Fund, the California Tax Exempt Money Market Fund and the Global Income Money Market Fund ("Non-CDSL Funds") will be offered without a sales charge or CDSL.

5. The CDSL would be imposed on a redemption of shares of any CDSL Fund that causes the current value of the shares of that CDSL Fund held by a shareholder to fall below the total amount of payments for the purchase of shares of the CDSL Fund made by the shareholder during the preceding four years. No CDSL would be imposed to the extent that the net asset value of the CDSL Fund shares redeemed by a shareholder does not exceed (i) the current net asset value of shares of the CDSL Fund purchased more than four years prior to the redemption, plus (ii) the current net asset value of shares of the CDSL Fund purchased through reinvestment of dividends or capital gains distribution, plus (iii) increases in the net asset value of the shares of the CDSL Fund above purchase payments made during the preceding four years.

6. The amount of the CDSL imposed on a shareholder of a CDSL Fund would depend on the number of years that had elapsed since the shareholder made the

purchase payment from which an amount is being redeemed. The CDSL would be 3% in the first year and would decrease to 2% in the second and third year, then to 1% in the fourth year. The amount of the CDSL (if any) would be calculated by first determining the date on which the purchase payment that is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption subject to the CDSL. All purchase payments for shares of a Fund made by a shareholder during a month would be aggregated and deemed to have been made on the last day of the preceding month for purposes of determining the number of years that had elapsed since the purchase payments were made. In determining whether a CDSL is payable, the Applicants will assume that the purchase payment for shares of a Fund from which a redemption is made is the earliest purchase payment from which a full redemption has not already been effected. In addition, the Company will assess no CDSL on exchanges of shares between Funds. Moreover, for purposes of the CDSL, when shares of one Fund are exchanged for shares of another Fund, the purchase date for the shares of the Fund exchanged into will be assumed by the Company to be the date on which the shares were purchased in the Fund (whether a CDSL Fund or a Non-CDSL Fund) from which the exchange was made. If the exchanged shares themselves were acquired through an exchange, the purchase date will be assumed to carry over from the date of the original investment in the first Fund in the series of exchanges, whether a CDSL Fund or a Non-CDSL Fund.

7. Under the Applicants' proposal, the CDSL would be waived on the following redemptions: (i) Any partial or total redemption of shares of a shareholder who dies or becomes disabled, so long as the redemption is requested within a year after death or initial determination of disability; (ii) any partial or complete redemption in connection with certain distributions from Individual Retirement Accounts ("IRAs") or other qualified retirement plans; (iii) redemptions effected by (a) employees or retired employees of GWFSC or its subsidiaries and (b) IRAs, Keogh plans and employee benefit plans for those employees or retired employee; (iv) redemptions effected by directors, trustees, officers or advisory board members, or persons retired from such positions, of any investment company for which GWFSC or an affiliate serves as investment adviser; (v) redemptions effected by an

investment company registered under the 1940 Act in connection with the combination of the investment company with the Company by merger, acquisition of assets or by any other transaction; (vi) redemptions by registered representatives or full-time employees of dealers with which GWFS has entered into sales agreements for the sale of Company shares; (vii) redemptions by institutional investors that invest \$1 million in one or more of the Funds in the aggregate; (viii) redemptions effected by certain retirement plans qualified under Section 457 of the Internal Revenue Code of 1986, as amended, and related employee benefit plans of a single employer for which Great Western Bank provides a Great Western savings option and recordkeeping services; and (ix) redemptions effected pursuant to the Company's automatic cash withdrawal plan, under which a shareholder who owns shares of a Fund with a value in excess of \$10,000 may elect to receive periodic cash payments of at least \$100, if the amount withdrawn per month is equal to or less than 5% of the value of the shareholder's shares in the Fund at the time the withdrawal plan commences. The Applicants also propose to institute a one-time only reinvestment privilege under which a shareholder who redeemed shares subject to the CDSL and reinvested the proceeds of the redemption within 30 days after the redemption would receive a credit against the amount of the CDSL paid. The percentage of the CDSL credited to the shareholder would be the same as the percentage of the redemption proceeds that are reinvested.

8. The Company proposes to finance its distribution expenses under the Plan mentioned above. Under the Plan, the Company will pay an annual fee to GWFS for expenses incurred by GWFS in connection with the offering of each series of the Company's shares. The fee of GWFS for its services under the Plan will be paid monthly by the Company with respect to each Fund at an annual rate not to exceed .50% of the average daily net assets of the particular Fund.

9. The Applicants propose to offer to exchange shares of any CDSL Fund for shares of another CDSL Fund without the imposition of A CDSL at the time of the exchange. Upon subsequent redemptions, such shares will be subject to CDSL calculated by reference to the date of the initial purchase of the first CDSL Fund's shares. In addition, shares of any CDSL Fund may be exchanged for shares of any Non-CDSL Fund, such

shares will be subject to the CDSL charge of the CDSL Fund, taking into account the time such shares were held in the Non-CDSL Fund. Finally, shares of any Non-CDSL Fund may be exchanged for shares of any CDSL Fund without the imposition of any CDSL at the time of the exchange. Such shares, upon subsequent redemption from the CDSL Fund, will be subject to the CDSL charge of the CDSL Fund, also taking into account the time such shares were held in the Non-CDSL Fund. In each instance, the CDSL is deferred until such time as the shareholder ultimately redeems shares from the company.

Applicants' Legal Conclusions

10. The applicants submit that granting their request is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The Applicants request that the order be applicable to the existing Funds and the Additional Funds, subject to their compliance with all the representations and conditions in the application. The Applicants acknowledge that they bear the burden of ensuring that the exchange offer and the CDSL complies with the condition set forth below.

Applicants' Conditions

The Applicants agree that the following may be made conditions to the proposed relief:

1. The Applicants will comply with the provisions of revised proposed rule 11a-3, Investment Company Act Release No. 16504 (July 30, 1988), 53FR 30299 (August 11, 1988), as currently proposed and as further revised and/or adopted.

2. The Applicants will comply with the provisions of proposed rule 6c-10, Investment Company Act Release No. 16169 (November 2, 1988), 53 FR 45275 (November 9, 1988), as currently proposed and as further revised and/or adopted.

3. The Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed rule 11a-3 and as that rule may be further revised and/or adopted, except that an amended order is not required to terminate the exchange offer.

4. The Applicants will obtain an amended order prior to any modification of the CDSL in a manner inconsistent with the provisions of proposed rule 6c-10 and as that rule may be revised and/or adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc.89-15043 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17011; 812-7298]

The Lincoln National Life Insurance Co. et al.

June 15, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Lincoln National Life Insurance Company ("LNL"); Lincoln National Variable Annuity Account H ("Variable Account"); and American Funds Distributors, Inc. ("AFD").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from Sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit LNL to deduct mortality and expense risk charges from the assets of the Variable Account.

Filing Date: The application was filed on April 17, 1989 and an amendment was filed on May 31, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 10, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, IN 46801; American Funds Distributors, Inc., 333 South Hope Street, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272-3017, or Clifford E. Kirsch, Special Counsel, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Variable Account was established in connection with the proposed issuance of flexible premium variable annuity contracts ("Contracts").
2. The Variable Account will invest in shares of the American Variable Insurance Series ("Series Fund"). The Series Fund is an open-end, diversified management investment company with a number of series, or portfolios. The Variable Account has a number of subaccounts, each of which invests solely in a specific corresponding portfolio of the Series Fund.
3. LNL will deduct a contract maintenance charge of \$35 per year to compensate LNL for administrative services provided to contract owners. LNL also deducts an administrative expense charge at an effective annual rate of .10% of the net assets of the Variable Account. LNL does not anticipate any profits from these charges.
4. A contingent deferred sales charge of up to 6% of purchase payments is imposed on certain full surrenders or partial withdrawals under the Contracts.
5. The administrative and contingent deferred sales charges under the Contracts may be waived or reduced under certain circumstances which are described more fully in the application.
6. LNL imposes a charge to compensate it for bearing certain mortality and expense risks under the Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the net assets of the Variable Account. Of that amount, approximately .80% is attributable to mortality risks, and approximately .45% is attributable to expense risks.
7. The mortality risk borne by LNL arises from its obligation to make annuity payments regardless of how long all annuitants may live and from its obligation to pay a death benefit that may be higher than the Contract value. LNL's expense risk is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by LNL.
8. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on LNL. Conversely, if the charge is more than sufficient to cover costs, any

excess will be profit to LNL. LNL currently anticipates a profit from this charge.

9. LNL does not anticipate that the contingent deferred sales charge will generate sufficient funds to pay the cost of distributing the Contracts. If the distribution charges are insufficient to cover the expenses, the deficiency will be met from LNL's general account which may include amounts derived from the mortality and expense risk charge.

10. LNL states that the mortality and expense risk charge is a reasonable charge to compensate LNL for the risks assumed under the Contracts.

11. LNL represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon LNL's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. LNL will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

12. Applicants acknowledge that any profit realized from the mortality and expense risk charge may be viewed by the Commission as being offset by distribution expenses not reimbursed by the contingent deferred sales charge. LNL has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by LNL at its administrative offices and will be available to the Commission.

13. LNL also represents that the Variable Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15045 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17012; 812-7277]

**National Tax Credit Partners L.P. and
National Partnership Investments
Corp.; Notice of Application**

June 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: National Tax Credit Partners L.P., a California limited partnership ("Partnership"), and its general partner, National Partnership Investments Corp., a California corporation ("General Partner").

Relevant 1940 Act Sections: Exemption under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order to permit the Partnership to invest primarily in other limited partnerships that will develop, rehabilitate, own and operate housing complexes eligible for low income housing and historic rehabilitation tax credits.

Filing Date: The application was filed on March 23, 1989, and amended on June 13, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 11, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicants, 9090 Wilshire Boulevard, Second Floor, Beverly Hills, CA 90211.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3567 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be

contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership was organized under the California Revised Limited Partnership Act as a vehicle for equity investment in apartment complexes ("Apartment Complexes") eligible for low income housing tax credits under the Internal Revenue Code of 1986, as amended ("Code"), or, in certain cases, for historic rehabilitation tax credits under the Code ("Tax Credits") and assistance under other governmental programs promoting low- or moderate-income housing.

2. The Partnership will operate as a "two-tier" partnership by investing primarily as a limited partner in other partnerships ("Local Partnerships") which will develop, rehabilitate, own, and operate Apartment Complexes.¹ Local Partnerships will be primarily limited partnerships, but also may be general partnerships or joint ventures. However, the Partnership will invest no more than 10% of its funds in general partnerships or joint ventures. The Partnership's investment objectives are: (a) To provide Qualified Investors (defined herein) current tax benefits in the form of Tax Credits to offset their federal income tax liability; (b) to preserve and protect the Partnership's capital; and (c) to provide cash distributions.

3. The Partnership will normally acquire at least a 90% interest in the profits, losses and Tax Credits, as well as a specified interest in the cash distributions, of the Local Partnerships, with the balance remaining with the local general partners. Should the Partnership invest in any Local Partnership in which it acquires less than 50% of the limited partnership interest, the Partnership's partnership agreement ("Partnership Agreement") will provide that the Partnership will have at least a 50% vote to: (a) Amend the Local Partnership agreement; (b) dissolve the Local Partnership; (c) remove the local general partner and elect a replacement; and (d) approve or disapprove the sale of substantially all of the assets of such Local Partnership. In addition, the Partnership will require that the Local Partnership agreements

provide to the limited partners of the Local Partnerships substantially all of the rights required by Section VII of the guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

4. The Partnership filed a registration statement under the Securities Act of 1933 for the sale of units ("Units") at \$5,000 per Unit. Each Unit consists of two limited partnership interests ("Limited Partnership Interests") and one warrant ("Warrant") granting an investor the right to purchase one additional limited partnership interest ("Additional Limited Partnership Interest") between January 1, 1990 and January 31, 1990. If the prescribed minimum number of subscriptions have not been met, no Units will be sold and funds paid by subscribers will be returned promptly, together with a pro rata share of any interest earned thereon. The Partnership will not admit any subscribers as limited partners ("Limited Partners") to the Partnership until the exemptive order applied for herein is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the 1940 Act. In the event that any of the Warrants are not exercised, the Partnership may sell the related Additional Limited Partnership Interests to other Qualified Investors (defined herein). Purchasers of the Units and Additional Limited Partnership Interests will become Limited Partners of the Partnership. The Warrants are not detachable from the Limited Partnership Interests at any time, and neither the Units nor the Warrants are transferable. The Partnership Agreement also imposes certain restrictions on transfer and assignment of the Limited Partnership Interests, including that each proposed assignee must deliver to the General Partner evidence of his suitability. The Partnership will not redeem or repurchase Units or Limited Partnership Interests, does not anticipate formation of a public market for the Units or Limited Partnership Interests, and thus believes purchases of Units should be considered illiquid investments.

5. Subscriptions for Units must be approved by the General Partner and PaineWebber Incorporated ("Selling Agent"). Each subscriber must represent that he meets the following general investor suitability standards ("Qualified Investor"): (a) In the case of corporate investors that are closely held but are not personal service corporations, corporations subject to Subchapter S of the Code, and C Corporations that are not closely held

and are not personal service corporations, such corporations reasonably expect for most of the next ten years to have substantial unsheltered income against which the Tax Credits from the Partnership can be utilized; or (b) in the case of noncorporate investors, such investors reasonably expect to have an annual adjusted gross income of \$200,000 or less or to have substantial unsheltered passive activity income for 1989 and each of at least the next ten years in which the Tax Credits are expected to be available, and either (i) has a net worth (exclusive of home, furnishings, and automobiles) of at least \$30,000 and an annual gross income of not less than \$30,000 in the current year, (ii) has a net worth (exclusive of home, furnishings, and personal automobiles) of at least \$75,000, or (iii) is purchasing in a fiduciary capacity for a person meeting the requirements set forth in clause (i) or (ii). Certain states may impose additional or alternative standards, but in no event shall the Partnership employ any suitability standard less restrictive than that set forth above.

6. Although the Partnership will be controlled by its General Partner, certain significant actions cannot be taken by the General Partner without the express consent of a majority in interest of the Limited Partners. Such actions include: (a) The sale at any one time of all or substantially all of the assets of the Partnership, except for (i) a liquidating sale of a final Local Partnership interest remaining after the sale of all other Local Partnership interests, or (ii) sales in connection with the liquidation and winding up of the Partnership's business upon its dissolution; (b) dissolution of the Partnership; and (c) the admission of a successor or additional General Partner. Also, the majority in interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), dissolve the Partnership, and remove any General Partner and elect a replacement therefor. In addition, each Limited Partner is entitled to review at any and all reasonable times all books and records of the Partnership and of the Local Partnerships.

7. PaineWebber T.C., Inc., an Affiliate (as defined in the Partnership Agreement) of the Selling Agent, will serve as the special limited partner of the Partnership ("Special Limited Partner"). The Special Limited Partner and the General Partner will each have the right to appoint three of the six members of the Partnership's investment committee, which must approve certain

¹ The Partnership may invest in Apartment Complexes that have commercial, retail or office space, but only if such space (a) is merely an ancillary feature of the Apartment Complex's overall development structure, (b) does not represent the primary tax or economic motivation underlying the Partnership's investment in the Apartment Complex, and (c) does not generate in excess of 20% of the anticipated total gross rental income of the Apartment Complex.

of the Partnership's investment decisions. The Special Limited Partner will also have the right to remove, and appoint a substitute for, the General Partner under certain limited circumstances. The Special Limited Partner will provide consulting services to the General Partner for the administration of the Partnership's affairs.

8. The General Partner and its Affiliates will receive from the Partnership reimbursement of organizational and offering expenses and an allowance for wholesaling expenses. The Selling Agent will receive customary commissions, an investment banking fee on the sale of the Units, and a marketing fee. The Selling Agent may authorize other members of the National Association of Securities Dealers, Inc. ("NASD") to sell Units, and may reallocate them commissions. These selling commissions and fees are customarily charged in securities offerings of this type and are consistent with the NASD guidelines. Acquisition phase fees payable to all persons for the acquisition of interests in Local Partnerships will be limited by the guidelines adopted by NASAA. The Partnership may pay additional fees or compensation to the General Partner, the Special Limited Partner, or their Affiliates, and they may receive amounts from Local Partnerships to the extent permitted by applicable law and regulations. All such fees and amounts shall be subject to the terms of the Partnership Agreement. The General Partner also will be allocated generally 1% of cash flow and 1% of the Tax Credits received by the Partnership, and compensation in various forms will be paid to the general partner of each Local Partnership.

9. All proceeds of the public offering of Units and Additional Limited Partnership Interests (other than those issued upon exercise of the Warrants) will initially be placed in an escrow account with United States Trust Co. of New York ("Escrow Agent"). Pending release of the proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in interest bearing accounts which will be limited to (a) bank money accounts with the Escrow Agent that are fully segregated and fully covered by federal deposit insurance, (b) short-term certificates of deposit issued by a United States Bank having a net worth of at least \$50 million, and (c) short-term securities issued or guaranteed by the United States government. Upon receipt of the prescribed minimum number of subscriptions, funds in escrow will be

released to the Partnership and held in trust pending investment in Local Partnerships or Apartment Complexes. Any net proceeds not immediately utilized to acquire Local Partnership interests or for other Partnership purposes (such as the establishment of a reserve) may be invested in permitted interim investments, which include: (a) Readily marketable securities issued by states or municipalities within the United States or agencies or subdivisions thereof rated in the highest rating category by a nationally recognized statistical rating organization ("NRSRO"); (b) direct obligations of, or obligations unconditionally guaranteed by, the United States government or any agency thereof; (c) commercial paper issued by any corporation organized and doing business under the laws of the United States or any state thereof rated in the highest category by a NRSRO; (d) certificates of deposit or Eurodollar certificates of deposit issued by any bank whose deposits are federally insured and which have a combined capital and surplus of not less than \$100 million (or, in the case of Eurodollar certificates of deposit, a branch of any such bank); (e) collateralized repurchase agreements with domestic banks whose deposits are federally insured and which have a combined capital and surplus of not less than \$100 million having a duration no longer than 90 days (or any extension or renewal thereof for a period not exceeding the period of the initial agreement) with respect to or secured by any of the types of securities specified in clauses (a) through (c) above; and (f) shares of any open-end investment company, as defined in the 1940 Act, which has assets of not less than \$200 million and invests primarily in securities of the type enumerated in clauses (a) through (e) above or banker's acceptances; provided, however, that if the value of "investment securities" (as defined in the 1940 Act and which term shall not include the value of the Local Partnership interests) exceeds 40% of the value of the Partnership's total assets (exclusive of government securities, as defined in the 1940 Act, and cash items) at any time, such excess may be invested only in government securities.

Applicants' Legal Conclusions

1. The exemption of the Partnership from all provisions of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with national policy is not economically suitable for private investors without the tax and organizational advantages of the limited

partnership form; (b) the limited partnership form insulates each Limited Partner from personal liability, limits his financial risk to his investment, and allows him to claim his proportionate share of the Tax Credits, income, and losses from the investment; and (c) the limited partnership form of organization is incompatible with fundamental provisions of the 1940 Act.

2. Investment Company Act Release No. 8456 (Aug. 9, 1974) lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for the type of exemptive relief which the Partnership seeks: (a) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable * * *;" and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection. Interests in the Partnership will be sold only to, and transfers will be permitted only to, investors who meet specified suitability standards. The Limited Partners are adequately protected through disclosure in the Partnership's Prospectus of all potential conflicts with the General Partners, the Special Limited Partner, and their Affiliates. The Partnership will file with the SEC and distribute to investors certain financial documents and reports on its activities. Also, the General Partner and its Affiliates agree in the Partnership Agreement that each General Partner and its Affiliate (excepting such Affiliates that are publicly or privately syndicated limited partnerships) will not undertake an equity investment which could be suitable for the Partnership unless (a) the Partnership does not have funds available to consummate the transaction on a timely basis, or (b) the Partnership has declined to enter into such investment (with Affiliates that are publicly or privately syndicated limited partnerships being able to undertake such an investment only under certain circumstances that have been limited to protect the interests of the Limited Partners). In addition, the Partnership will not acquire Apartment Complexes from a prior partnership affiliated with the General Partner unless certain conditions are met that are designed to protect the interests of the Limited Partners and ensure that the terms of the transaction are fair to the Partnership. Limited Partners are further protected

by the numerous provisions of the Partnership Agreement designed to prevent over-reaching by the General Partner and to assure fair dealing by the General Partner vis-a-vis the Limited Partners.

3. The substantial fees and other forms of compensation that will be paid to the General Partner, the Special Limited Partner, and their Affiliates will not have been negotiated through arm's-length negotiations. Applicants conclude, however, that the terms of all such compensation will be fair and no less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. In addition, all compensation to be paid to the General Partner and its Affiliates is specified in the Partnership Agreement and the Partnership's Prospectus and no compensation will be payable to the General Partner or any of its Affiliates not so specified. Further, the Partnership believes that such compensation meets all applicable guidelines of the various states in which the Units and the Additional Limited Partnership Interests will be offered and sold and with the statement of policy adopted by NASAA applicable to real estate programs in the form of limited partnerships.

4. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the 1940 Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Partnership by various federal, state and local agencies, provide protection to investors in Units comparable to and in some respects greater than that provided by the 1940 Act. An exemption would therefore be entirely consistent with the protection of investors and the purposes and policies of the 1940 Act.

5. Applicants acknowledge that the order requested from the SEC applies in a prospective manner only and they will not rely on such order with respect to any activities, investments or commitments by them prior to the date of the order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-15046 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17014; 812-7219]

The PNC Fund and TBC Funds Distributor, Inc.

June 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The PNC Fund ("Fund," formerly NCP Funds) and TBC Funds Distributor, Inc. (the "Distributor").

Relevant 1940 Act Section: Section 11(a).

SUMMARY OF APPLICATION: Applicants seek an order approving certain exchange offer of shares among existing and future investment portfolios of the Funds on a basis other than their relative net asset values per share at the time of the exchange.

FILING DATES: The application was filed on January 17, 1989, and an amendment was filed on May 25, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 12, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, Washington, DC 20549. Applicants, c/o Drinker Biddle & Reath, 1100 PNB Building, Broad & Chestnut Streets, Philadelphia, PA 19107. Attention: Jeffrey A. Dalke, Esq. or Eric C. Freed, Esq.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Applicants are the Fund, an open-end management investment company registered under the 1940 Act, and its Distributor. The Fund currently consists of a Government Obligations Money Market Portfolio, a Money Market Portfolio, and a Tax-Free Money Market Portfolio (collectively, the "No-Load Portfolios"); and an Equity Portfolio, a Balanced Portfolio, a Fixed Income Portfolio, and an International Portfolio (collectively, the "Load Portfolios"). Approval of the proposed exchange offer is sought on behalf of the existing and future No-Load and Load Portfolios (collectively referred to as the "Portfolios").

2. Shares of the No-Load Portfolios are sold at net asset value without a sales charge. Shares of the Load Portfolios are offered at net asset value plus a front-end sales load. None of the Portfolios currently charges a contingent deferred sales load or a redemption fee. Applicants wish to allow the exchange of shares of a Portfolio (whether Load or No-Load) for shares of a Load Portfolio.

Applicants' Analysis

1. Applicants state that the purpose of their exchange offer is to permit simultaneous, voluntary redemption and purchase transactions initiated solely at a shareholder's request. Applicants state that certain share exchange transactions may not comply with Section 11(a) of the 1940 Act because they could be interpreted to be on a basis other than relative net asset values. Applicants are concerned, however, that if exchanges are always made at the relative net asset values of the shares involved in the exchanges without the imposition of any sales load, the distribution system of the Load Portfolios would be disrupted because an investor could easily avoid the sales load by acquiring No-Load Portfolio shares and immediately exchanging the shares for Load Portfolio shares.

2. Applicants assert that their exchange offer will solve these concerns, be equitable to all shareholders and benefit exchanging shareholders by crediting them for sales loads previously paid. Applicants state further that the arrangements described in the application are substantially identical to those that have been the subject of other applications granted by the SEC and are consistent with revised proposed Rule 11a-3 under the 1940 Act.

3. Accordingly, Applicants submit that the granting of their request is appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

The Applicants agree that the following may be made conditions to the proposed relief:

1. The Applicants will comply with the provisions of proposed Rule 11a-3, Investment Company Act Release No. 16504 (July 20, 1988), 53 FR 30299 (August 11, 1988) as currently proposed and as further revised and/or adopted.

2. Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed Rule 11a-3 as currently proposed and as further revised and/or adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15047 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Metropolitan Knoxville Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On November 9, 1988, the FAA determined that the noise exposure maps submitted by the Metropolitan Knoxville Airport Authority under Part 150 were in compliance with applicable requirements. On May 5, 1989, the Administrator approved the McGhee Tyson Airport noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the McGhee Tyson Airport noise compatibility program is May 5, 1989.

FOR FURTHER INFORMATION CONTACT: Otis T. Welch, Principal Planner/

Programmer; Airports District Office; 3973 Knight Arnold Road, Suite 105; Memphis, Tennessee 38118-3004; telephone number 901/521-3495. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for McGhee Tyson Airport, effective date May 5, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties in the local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

- The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;
- Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;
- Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and
- Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems,

or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Memphis, Tennessee.

The Metropolitan Knoxville Airport Authority submitted to the FAA on September 20, 1988, and October 20, 1988, noise exposure maps, descriptions and other documentation produced during the noise compatibility planning study conducted from January 1986 to December 1987. The McGhee Tyson Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 9, 1988. Notice of this determination was published in the *Federal Register* on November 29, 1988.

The McGhee Tyson Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 9, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eleven proposed actions for noise mitigation (on an/or off the airport). The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The

overall program, therefore, was approved by the Administrator effective May 5, 1989.

Outright approval was granted for ten of the specific program elements. A measure to encourage the County to update its Hazard Zoning Ordinance using FAA Part 77 Imaginary Surfaces was disapproved because the measure involved height control and is not directly related to noise.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on May 5, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Metropolitan Knoxville Airport Authority.

Issued in Memphis, Tennessee, June 5, 1989.

John M. Dempsey,
Manager, Memphis Airports District Office.
[FR Doc. 89-14901 Filed 6-23-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 156 (Rev. 10); Chief Counsel Directives Manual (30)330]

Delegation of Authority to Permit Disclosure of Tax Information and To Permit Testimony of the Production of Documents

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to Delegation Order No. 156 (Rev. 10).

SUMMARY: This document contains corrections to the Federal Register publication for Friday, June 2, 1989, at 54 FR 23729 of Delegation Order No. 156 (Rev. 10). The document relates to the delegation of authority to permit disclosure of tax information and to permit testimony of the production of documents.

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Carman L. Gannotti, EX:D, Room 1603, 1111 Constitution Avenue NW., Washington, DC 20224. Telephone (202) 566-4263, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The document which is the subject of these corrections is a revised delegation order authorizing certain Internal Revenue Service officials to disclose returns filed in accordance with section

6050I of the Internal Revenue Code (IRC) as prescribed in IRC 6103(i)(8).

Need for Correction

As published, the delegation order contains errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Accordingly, FR Doc. 89-13037 published June 2, 1989 is corrected as follows:

Paragraph 1. On page 23730, line 6 of column 1, the language "(1) Deputy Assistant Commissioners;" should read "(1) Deputy Assistant Commissioners;"

Par. 2. On page 23733, line 28 of column 1, the language "written request, or returns filed in" should read "written request, of returns filed in".

Dale D. Goode,
Chief, Regulations Unit Assistant Chief Counsel (Corporate).
[FR Doc. 89-14942 Filed 6-23-89; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463 (Federal Advisory Committee Act) as amended by section 5(c) of Pub. L. 94-409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Logan Airport Hilton Hotel, Logan International Airport, Boston, MA 02128 July 27, 1989. The session is scheduled to begin at 10 a.m. and end at 3:15 p.m. The meeting will be for the purpose of reviewing two new clinical trials, one in the treatment of patients with AIDS and one in reduction of alcohol intake in lowering blood pressure. The Committee advises the Director, Medical Research Service, through the chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 10 to 10:30 a.m., to discuss the general status of the program. To assure adequate accommodations, those whose plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-233-2861), prior to July 21, 1989.

The meeting will be closed from 10:30 a.m. to 3:15 p.m. for consideration of

specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92-463, (the Federal Advisory Committee Act) as amended by section 5(c) of Pub. L. 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Dated: June 15, 1989.

By direction of the Secretary:

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 89-14975 Filed 6-23-89; 8:45 am]
BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Health Services and Development; Meetings

The Department of Veterans Affairs gives notice under Pub. L. 92-463 that an advisory committee meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Vista International Hotel, 1400 M Street, NW., Washington, DC, on July 17, 18 and 19, 1989. The first phase of these meetings will begin at 7:30 p.m. and adjourn at 9 p.m. on the evening of July 17, 1989. The meetings will convene at 8 a.m. on July 18 and 19 and adjourn at 5 p.m. on July 18 and 3:30 p.m. on July 19, 1989. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Assistant Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the July 17th session for approximately one hour to cover administrative matters and to discuss the general status of the program.

The closed portion of the meetings involves: Discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel

conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409,

closing portions of these meetings is in accordance with 5 U.S.C. 552(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue, NW., Washington, DC, 20420, (phone: 202/

233-6935) at least 5 days before the meeting.

Dated: June 15, 1989.

By direction of the Secretary:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-14974 Filed 6-23-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 121

Monday, June 26, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 24464.
PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 27, 1989.

CHANGES IN THE AGENDA: The Commodity Futures Trading Commission has cancelled the open meeting to discuss the Regulation of Hybrid Instruments/Final Rule previously scheduled for 10:00 a.m., June 27, 1989. The meeting will be rescheduled for July.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-15187 Filed 6-22-89; 2:11 pm]
BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:35 p.m. on Tuesday, June 20, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the

Sunshine Act" (5 U.S.C. 552(c)(2), (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: June 21, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-15147 Filed 6-22-89; 11:23 am.]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 7:43 a.m. on Wednesday, June 21, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: June 21, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-15148 Filed 6-22-89; 11:23 am]
BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, June 28, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED:

Pete du Pont for President, Inc., Oral presentation under 11 CFR 9038.2(c)(3).

"FEDERAL REGISTER" NO. 89-14885.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 29, 1989, 10:00 a.m., Meeting open to the public.

The following items were added to the agenda:

Position description—Inspector General
Final drafts—Voting systems standards.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Majorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89-15130 Filed 6-22-89; 10:18 am]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, June 30, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 22, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-15201 Filed 6-22-89; 3:02 am]
BILLING CODE 6210-01-M

Sunshine Act Meetings

The Sunshine Act, which requires that certain government meetings be open to the public, was passed by Congress in 1976. It was designed to increase transparency and accountability in government.

The act applies to all federal agencies, as well as state and local governments. It requires that meetings be open to the public unless they fall under one of the exemptions. The exemptions include: national defense, foreign relations, internal security, and financial matters.

The act also requires that agencies provide advance notice of meetings and allow the public to attend. It also gives the public the right to request that a meeting be held in public. The act was a landmark piece of legislation that helped to make government more open and accountable.

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Federal Register

**Monday
June 26, 1989**

Part II

Department of Labor

Pension and Welfare Benefits Administration

**29 CFR Parts 2560 and 2570
Employee Retirement Income Security
Act; Civil Penalties Assessment
Procedures and Administrative Hearings
Procedures; Final Rules**

DEPARTMENT OF LABOR

Pension and Welfare Benefits
Administration

29 CFR Part 2560

RIN 1210-AA34

Final Regulation Relating to Civil
Penalties Under ERISA Section
502(c)(2)AGENCY: Pension and Welfare Benefits
Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that describes procedures relating to the assessment of civil penalties under section 502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA, or the Act). Section 502(c)(2) authorizes the Secretary of Labor (the Secretary) to assess a civil penalty of up to \$1,000 a day against a plan administrator who fails or refuses to file the annual report on behalf of an employee benefit plan required under section 101(b)(4) of the Act. The regulation clarifies the manner in which the Department will assess penalties under ERISA section 502(c)(2) and the procedures for agency review. A separate document containing a final regulation relating to procedures for hearings before an administrative law judge, and appeals, on assessments of penalties under ERISA section 502(c)(2) is also being published in today's Federal Register.

EFFECTIVE DATE: The regulation is effective with respect to annual reports required to be filed for plan years beginning on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: David Lurie, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-8671, U.S. Department of Labor, Washington, DC 20210, or Vicki Schteir-Dunn, Plan Benefit Security Division, Office of the Solicitor, (202) 523-9596 U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 502(c)(2) provides that the Secretary may assess a civil penalty of up to \$1,000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed under section 101(b)(4).¹ ERISA section

101(b)(4) requires the administrator of an employee benefit plan to file an annual report containing the information required by section 103. Section 103 of ERISA and the Department's regulations thereunder (29 CFR 2520.103-1 *et seq.*) describe the content of the annual report.

Section 502(c)(2) also provides that an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary. ERISA section 104(a)(4) provides, in relevant part, that the Secretary may reject any filing upon determining that such filing is incomplete. Section 104(a)(5) describes various remedies available to the Secretary where a filing is rejected and a revised filing satisfactory to the Secretary is not submitted within 45 days.²

On October 17, 1988, the Department published a notice in the *Federal Register* (53 FR 40674) containing proposed regulation § 2560.502c-2 relating to the manner in which the Department will assess civil penalties under section 502(c)(2). On the same date, the Department also published a notice of proposed rulemaking in the *Federal Register* (53 FR 40677) relating to procedures for hearings before an administrative law judge, and appeals, on assessment of penalties under section 502(c)(2).

In general, proposed regulation § 2560.502c-2, discussed in detail below, addressed: the circumstances under which a penalty might be assessed (§ 2560.502c-2(a)); factors considered by the Department in determining the amount of a penalty (§ 2560.502c-2(b)); the provision of notice to the administrator of the Department's intention to assess a penalty (§ 2560.502c-2(c)); waiver of all or part of the penalty by the Department upon a showing of reasonable cause and the requirements relating to a showing of reasonable cause (§ 2560.502c-2(d) and (e)); the effect of a failure to file a statement of reasonable cause (§ 2560.502c-2(f)); the provision of notice to the administrator of the Department's findings as to reasonable cause and the effect of such notice where a penalty is to be assessed (§ 2560.502c-2(g)); the effect of a request for a hearing before an administrative law judge (§ 2560.502c-2(h)); service of notices

(§ 2560.502c-2(i)); and the liability of the administrator for assessed penalties (§ 2560.502c-2(j)).

As indicated in the supplementary information accompanying the proposed regulation, the Department believes that the section 502(c)(2) sanction is a valuable additional enforcement tool which is necessary to ensure compliance with ERISA's annual reporting requirements. The Department also believes that adoption of this regulation is necessary for the effective implementation of its annual reporting enforcement program. In this regard, the Department also notes that section 9342(d)(2) of OBRA 1987 provides that the Secretary shall issue regulations necessary to carry out the 502(c)(2) civil penalty provisions. Thus, the Department publishes this final regulation, and, separately, final procedural regulations relating to hearings and appeals on assessment of penalties under ERISA section 502(c)(2) (§ 2570.60 *et seq.*).

The notice of proposed rulemaking gave interested parties an opportunity to comment on the § 2560.502c-2 proposal. In response, the Department received eight letters of comment concerning the regulation. The discussion below summarizes the proposed regulation, the issues raised by the commentators and the Department's reasons for adopting the provisions of the final regulation.

B. Discussion of Regulation and Comments

General. A number of the commentators expressed general concern about the Department's assessment of civil penalties under section 502(c)(2) and the potential adverse impact such penalties might have on plan administrators, particularly administrators of small plans, who are making good faith, diligent efforts to comply with ERISA's annual reporting requirements. One commentator suggested that, in order to ensure that oversight errors do not result in a penalty, the Department assess penalties only where there is an intentional withholding of information, plus a past pattern of failure to reasonably comply with the annual reporting requirements.

With regard to these concerns, it is the view of the Department that the procedures being adopted in these final regulations, and the final regulations relating to hearings and appeals (§ 2570.60 *et seq.*), substantially reduce the possibility of a penalty being imposed on an administrator who demonstrates good faith and diligence in complying with ERISA's annual

¹ Section 502(c)(2) was added to ERISA by section 9342(c)(2) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987, Pub. L. 100-203).

² Under section 104(a)(5), the Secretary may, in addition to engaging an independent qualified public accountant or an enrolled actuary, bring a civil action for appropriate legal or equitable relief or take any other action authorized by Title I of ERISA, e.g., the assessment of a civil penalty under section 502(c)(2).

reporting requirements. As explained in the supplementary information accompanying the proposal, penalties under section 502(c)(2) will be assessed only in those instances where there is a failure or refusal to file any annual report within the prescribed time frames⁴ or where, subsequent to notification that a filed report has been rejected and the reasons therefor, there is a failure or refusal to file a corrected report within the 45 day period prescribed in section 104(a)(5). Section 104(a)(5) specifically contemplates that, where a filing is rejected under 104(a)(4), the filer will be afforded 45 days from the date of the rejection to submit a revised filing satisfactory to the Secretary. Accordingly, in the case of a report rejected under section 104(a)(4), the administrator can avoid the assessment of any penalty under 502(c)(2) by making the necessary corrections to the filing within the prescribed time frame. In addition, as reflected in the § 2560.502c-2 regulation, penalties may be waived, in whole or in part, upon the administrator's showing of reasonable cause for the failure to file a complete report. Finally, the Department notes that an administrator may, in accordance with the provisions of § 2560.502c-2 and § 2570.60 et seq., request a hearing before an administrative law judge on the Department's decision to assess a civil penalty under section 502(c)(2). The Department believes, as indicated above, that these procedures, in addition to efforts to obtain filer compliance prior to the proposed assessment of a penalty, serve to reduce the possibility of penalties being assessed where there is good faith compliance and diligence on the part of an administrator.

A number of the commentators also raised questions relating to the relationship of the penalties under section 502(c)(2) to those penalties imposed by the Internal Revenue Service for noncompliance with the annual reporting requirements of the Internal Revenue Code (the Code), and the extent to which the Department of Labor and the Internal Revenue Service will coordinate the assessment of penalties. While the penalties under both section 502(c)(2) of Title I of ERISA and the Code (sections 6652 and 6692 of the Code) relate to annual reporting requirements which are generally satisfied by the filing of the Form 5500

Series and related schedules, The Title I and Code penalties are separate and independent penalties. Therefore, penalties under one or both statutes could be assessed, or waived, in a given situation. In this regard, the Department will be coordinating its annual reporting compliance efforts with those of the Internal Revenue Service.

A discussion of the specific provisions of the regulation and comments thereon follows.

1. *Scope.* Proposed § 2560.502c-2(a) addressed the general application of section 502(c)(2). Paragraph (a)(1) provided that the administrator, as defined in ERISA section 3(16)(A), is liable for the penalties assessed under section 502(c)(2) in each case in which there is a failure or refusal to file the annual report on behalf of an employee benefit plan subject to the annual reporting requirements. Paragraph (a)(2) defined a failure or refusal to file the annual report as a failure or refusal to file, in whole or in part, that information described in ERISA section 103 and § 2520.103-1, et seq., at the time and in the manner prescribed for such filings.

One commentator, who indicated that subjecting administrators to a \$1000 a day penalty will only increase the burdens already imposed on small companies, recommended that the penalty provisions be limited to administrators of plans with over 100 participants. It is the view of the Department that the only burdens directly attributable to the civil sanctions under section 502(c)(2) are those which arise by virtue of noncompliance with the annual reporting requirements. In this regard, the Department can find no basis in the statute, the legislative history or otherwise for concluding that the administrators of small plans should be held to a lesser standard of compliance with applicable requirements than those of large plans. Accordingly, the final regulation, as proposed, will apply to any plan administrator (within the meaning of section 3(16)(A)) required to file an annual report under section 101(b)(4).

2. *Amount Assessed.* Proposed § 2560.502c-2(b)(1) provided that the Department shall take into account the degree and willfulness of the failure to file the annual report in determining the amount to be assessed under section 502(c)(2). Consistent with the terms of section 502(c)(2), paragraph (b)(1) provided that the penalty assessed by the Department shall not exceed \$1000 a day. With regard to the period for which a penalty may be assessed, paragraph (b)(1) provided that the penalty will be

computed from the date of the administrator's failure or refusal to file the annual report and continue up to the date on which an annual report satisfactory to the Secretary is filed. As explained in the supplementary information accompanying the proposed regulation, while the Department might assess a penalty for interim periods of noncompliance, liability for penalties under section 502(c)(2) continue for each day up to the date compliance is achieved. A number of the commentators indicated that a \$1000 a day penalty appeared to be severe for reporting violations. In this regard, the Department notes that a \$1000 a day penalty is the maximum penalty which can be assessed under section 502(c)(2) and, as provided in paragraph (b)(1) of the regulation, the Department will take into account the degree and willfulness of the failure to file in determining the amount of the penalty to be assessed. Paragraph (b)(1), therefore, is being adopted as proposed.

Paragraph (b)(2) of the proposal provided for a limited tolling of the penalty to permit plan administrators to present arguments to the Department concerning any reasonable cause for the failure to file without continuing to incur penalties for the failure. As described in the supplementary information accompanying the proposal, where an administrator, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c)), files a statement of reasonable cause (as described in paragraph (e)), no liability for penalties will incur for any day starting from the date the Department serves the administrator a copy of the notice to assess a penalty until the day after the Department issues the notice of determination on the statement of reasonable cause (as described in paragraph (g)). One commentator suggested that the regulation should be revised to make clear that penalties would be tolled whether or not the Department determined reasonable cause to exist. Paragraphs (b)(2) and (e) have been revised to make it clear that if an administrator files the statement of reasonable cause described in paragraph (e), penalties will be tolled for the described period regardless of the Department's determination on that statement.

Paragraph (b)(3) defined the date on which an administrator failed or refused to file the annual report as the date on which the annual report was due, determined without regard to any extension for filing. Paragraph (b)(3), like section 502(c)(2) of the Act, also provided that an annual report which is

⁴ ERISA section 104(a)(4) provides that the annual report described in section 103 is required to be filed within 210 days after the close of the plan year. However, an extension of time to file the annual report may be granted by the Internal Revenue Service [See: Instructions to the Form 5500 Series].

rejected under section 104(a)(4) for a failure to provide material information shall be treated as a failure to file the annual report. As indicated in the supplementary information accompanying the proposal, material information, for purposes of this provision, would be any information required to be included on, or as part of, the annual report which is necessary to process, verify or analyze an annual report.

One commentator indicated that the extension period should be considered, so that the failure or refusal to file is not considered to have taken place until after the expiration of the extension period. In the supplementary information accompanying the proposal, the Department expressed the view that in those situations where an extension of time is granted for the filing of the annual report and the administrator fails either to file a timely report or a complete report within the extension period, the administrator should not, for purposes of the 502(c)(2) penalty, benefit from the requested extension. The Department has not changed its view in this regard. Accordingly, for purposes of paragraph (b)(3) of the final regulation, the date on which the annual report was due is, as proposed, determined without regard to any extension of time granted for the filing of the report.

Another commentator suggested that paragraph (b)(3) be revised to make clear that, in the case of a rejected report, a failure to file occurs only where the administrator fails to correct a report within the 45 day period prescribed in section 104(a)(5). The Department has modified paragraph (b)(3) in the final regulation to clarify the application of the 45 day period for correcting deficient reports.

3. Notice of Penalty. Proposed § 2560.502c-2(c) provided that, prior to the assessment of any penalty under section 502(c)(2), the Department shall provide the administrator with a written notice indicating the Department's intention to assess a penalty, the amount of the penalty, the period to which the penalty applies, and the reasons for the penalty. This notice would be served in accordance with the service of notice provisions of § 2560.502c-2(i). Under § 2560.502c-2(f) of the regulation, this notice will become a final order of the Secretary, within the meaning of § 2570.61(g) (See: § 2570.60 et seq. also appearing in today's *Federal Register*), within 30 days of the service of notice, unless the statement of reasonable cause, described in § 2560.502c-2(e), is filed with the Department. No comments were

received on this paragraph; accordingly, paragraph (c) is being adopted without modification.

4. Waiver of Penalty. Paragraphs (d), (e), (f), (g), and (h) of the proposed § 2560.502c-2 generally related to the waiver of penalties under section 502(c)(2). Paragraph (d) provided that the Department may waive all or part of the penalty to be assessed under section 502(c)(2) upon a showing of reasonable cause for the failure to file the annual report. Paragraph (e) provided that, subsequent to the issuance of a notice of the Department's intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice to make an affirmative showing of reasonable cause for the failure to file a complete annual report or why the penalty, as calculated, should not be assessed. Paragraph (e) required that the statement be in the form of a written statement which sets forth all the facts alleged in support of reasonable cause and contains a declaration that the statement is made under penalties of perjury.

Paragraph (f) described the effect of a failure to file the statement of reasonable cause within the prescribed 30 day period. Paragraph (f) provided that a failure on the part of the administrator to file a timely statement of reasonable cause will constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(2). Under paragraph (f), the Department's notice of intent to assess a penalty, described in paragraph (c), then becomes a final order of the Secretary, within the meaning of paragraph (g) of § 2570.61 (See: § 2570.60 et seq. published in today's *Federal Register*).

Paragraph (g)(1) provided that, following a review of the facts alleged in the statement of reasonable cause, the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of the service of the notice, except as provided in paragraph (h). In general, paragraph (h) provided that the notice described in paragraph (g) shall not become a final order if, within the 30 days of the date of service of notice, the administrator initiates an adjudicatory proceeding under section 18 of Title 29, as modified by the

502(c)(2) procedural regulations (§ 2570.60 et seq.) also published in today's *Federal Register*. Specifically, the administrator is required to file, within 30 days of the date of the service of notice, an answer, as defined in § 2570.61(c), in accordance with § 2570.62.

One commentator, noting that paragraph (d) of the proposal permits, but does not require, the Department to waive all or part of a penalty on a showing of reasonable cause, recommended that the regulation be revised to require a waiver of the entire penalty where an administrator shows reasonable cause. The Department anticipates that 502(c)(2) penalties will be waived to the extent reasonable cause is demonstrated by a plan administrator. However, the Department also believes that there may be instances where the demonstrated reasonable cause justifies only a partial waiver of the penalty. For example, the Department proposes to assess a 60 day penalty and the administrator files a statement which demonstrates that reasonable cause existed for a 30 day period, but not for the 60 day period for which the penalty was assessed. Rather than having to assess or waive the entire penalty for the full 60 day period, the Department believes that it is in the interest of both the administrator and the Department to retain the flexibility to waive penalties in whole or in part. Accordingly, paragraph (d) is being adopted without modification.

With respect to paragraph (e), regarding the showing of "reasonable cause", one commentator suggested that the Department revise the regulation to clarify that administrators who make good faith and diligent efforts to comply with the reporting requirements will not be subject to a penalty. As explained above, the Department believes that the procedures established under the regulations for considering reasonable cause, as well as appeals of the Department's decisions on reasonable cause, are sufficiently flexible to ensure that appropriate consideration is given to good faith and diligent efforts to comply with the annual reporting requirements. Another commentator, noting that there are many factors that could result in a delay in filing or in an incorrect filing, supported the Department's approach is not attempting to specifically define the circumstances under which reasonable cause would exist. Accordingly, except for the clarification changes discussed with respect to paragraph (b)(2), paragraph (e) is being adopted without modification.

One commentator, noting that, under paragraph (f), a failure to file a statement of reasonable cause within the 30 day period described in paragraph (e) resulted in a waiver of the right to appear and contest the facts alleged in the notice of intent to assess a penalty and an admission of such facts for purposes of the 502(c)(2) penalty, indicated that it was unreasonable not to provide for some allowance for the possibility of mitigating circumstances which would explain the failure to respond within the 30 day period. It is the view of the Department that the 30 day period prescribed in the regulation provides administrators more than ample time to file a statement of reasonable cause and thereby apprise the Department of extenuating circumstances. Moreover, as discussed above, the notice of intent to assess a penalty will, in the case of a report which is rejected under section 104(a)(4), be preceded by an effort to obtain filer compliance, notice that the report has been rejected and an opportunity to correct, thereby providing the administrator with an early opportunity to apprise the Department of possible extenuating circumstances which might affect the assessment of a penalty. Paragraph (f), therefore, is being adopted as proposed.

No comments were received on paragraph (g); accordingly, paragraph (g) is being adopted without modification.

5. Service of Notices. Proposed § 2560.502c-2(i) described the manner in which the notice of intent to assess a penalty, described in paragraph (c), and the notice of determination on a statement of reasonable cause, described in paragraph (g), will be served. Under paragraph (i) of the proposed regulation service of notice could be accomplished by: (1) delivering a copy to the administrator or representative; (2) leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or (3) mailing a copy to the last known address of the administrator or representative thereof. One commentator expressed concern that mailing notice to the last known address may not in every case be adequate, because some sponsors, particularly smaller ones, are in businesses which tend to move frequently. In response to this comment, the Department has revised paragraph (i) by adding a new subparagraph relating to when service is deemed to occur. Specifically, new subparagraph (i)(2) provides that if service is accomplished by certified mail, service is complete upon mailing, and if done by

regular mail, service is complete only upon receipt.

6. Liability. Proposed § 2560.502c-2(j) clarified the liability of the parties for penalties assessed under section 502(c)(2). Paragraph (1) provided that, if more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable for such failure. Paragraph (2) provided that any person against whom a penalty is assessed under section 502(c)(2) is personally liable for the payment of such penalty. Paragraph (2) is intended to make clear that liability for the payment of penalties assessed under section 502(c)(2) is a personal liability of the person against whom the penalty is assessed and not a liability of the plan. Accordingly, as indicated in the supplementary information accompanying the proposal, the payment of penalties assessed under section 502(c)(2) from assets of a plan would not constitute a reasonable expense of administering the plan for purposes of ERISA sections 403 and 404.

No comments were received on paragraph (j); therefore, paragraph (j) is being adopted without modification.

7. Effective Date. Pursuant to section 9342(d)(1) of the Omnibus Budget Reconciliation Act of 1987, the civil penalty provisions of section 502(c)(2) apply with respect to reports required to be filed after December 31, 1987. As indicated in the supplementary information accompanying the proposal, the Department has interpreted this effective date provision to refer to annual reports required to be filed for plan years beginning after December 31, 1987, rather than the 1987 plan year annual reports filed in 1988. Accordingly, the proposal provided that the regulation would, upon adoption, be effective with respect to annual reports required to be filed for plan years beginning on or after January 1, 1988.

One commentator suggested that employers with fewer than 100 employees be afforded the opportunity to file annual reports without penalty until the first plan year beginning in 1989. As discussed above, the effective date of the 502(c)(2) civil sanctions was established by Congress under section 9342(d)(1) of OBRA 1987. Moreover, the Department believes that, with the enactment of the 502(c)(2) civil sanction provisions on December 22, 1987 and the Department's publication in the Federal Register of proposed regulations relating to the 502(c)(2) civil sanctions on October 17, 1988, the public has had an adequate opportunity to become aware of the new sanctions for noncompliance

with the annual reporting requirements. For these reasons, the final regulations will, as proposed, be effective with respect to annual reports required to be filed for plan years beginning on or after January 1, 1988. The Department notes that, in general, annual reports for calendar year plans would be filed in July 1989.

Executive Order 12291 Statement

The Department has determined that this regulation does not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in annual effect on the economy of \$100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act Statement

This regulation does not have any significant impact on a substantial number of small entities, and contains no reporting and disclosure requirements. The primary purpose of the regulation is to clarify the manner in which penalties under section 502(c)(2) of ERISA will be assessed by the Department for a failure or refusal to file the annual report in accordance with the statutory and regulatory annual reporting requirements. In the cases where a deficient report is filed, plan administrators will be afforded the opportunity to correct the deficiencies prior to the assessment of any penalty. In addition, in all cases in which the Department intends to assess a penalty, the penalty may be waived, in whole or in part, upon a showing of reasonable cause for the failure to comply. In view of the potentially limited circumstances under which penalties might be assessed pursuant to this regulation, the Department believes that this regulation will not have a significant impact on small employee benefit plans or substantially affect small entities which provide services to such plans.

Paperwork Reduction Act

This regulation does not contain any new information collection requirements and does not modify any existing requirements. Thus, the regulation is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Statutory Authority

The regulation set forth herein is issued pursuant to the authority contained in section 502(c)(2) and 505 of ERISA (Pub. L. 93-406, 88 Stat. 892, 894; 29 U.S.C. 1132(c)(2), 1135).

List of Subjects in 29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

Final Rule

In view of the foregoing, Part 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2560—[AMENDED]

1. By revising the authority citation for Part 2560 to read as set forth below:

Authority: Section 502(b)(2), 502(c)(2), 502(i) and 503 of ERISA, 29 U.S.C. 1132(b)(2), 1132(c)(2), 1132(i), 1133, 1135, 1022, and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

2. By adding a new § 2560.502c-2 in the appropriate place to read as follows:

§ 2560.502c-2 Civil penalties under section 502(c)(2).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A)) of an employee benefit plan (within the meaning of section 3(3) and § 2510.3-1, *et seq.*) for which an annual report is required to be filed under section 101(b)(4) shall be liable for civil penalties assessed by the Secretary under section 502(c)(2) of the Act in each case in which there is a failure or refusal to file the annual report required to be filed under section 101(b)(4).

(2) For purposes of this section, a failure or refusal to file the annual report required to be filed under section 101(b)(4) shall mean a failure or refusal to file, in whole or in part, that information described in section 103 and § 2520.103-1, *et seq.*, on behalf of the plan at the time and in the manner prescribed therefor.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(2) shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure to file the annual report. However, the amount assessed under section 502(c)(2) of the Act shall not exceed \$1,000 a day, computed from the date of the administrator's failure or refusal to file the annual report and, except as provided in paragraph (b)(2) of this

section, continuing up to the date on which an annual report satisfactory to the Secretary is filed.

(2) If upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section) the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the annual report shall be the date on which the annual report was due (determined without regard to any extension for filing). An annual report which is rejected under section 104(a)(4) for a failure to provide material information shall be treated as a failure to file an annual report when a revised report satisfactory to the Department is not filed within 45 days of the date of the Department's notice of rejection.

A penalty shall not be assessed under section 502(c)(2) for any day earlier than the day after the date of an administrator's failure or refusal to file the annual report if a revised filing satisfactory to the Department is not submitted within 45 days of the date of the notice of rejection by the Department.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(2), the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(2), the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(2) on a showing by the administrator that there was reasonable cause for the failure to file the annual report.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice, as described in paragraph (i) of this section, to file a statement of reasonable cause for the failure to file a complete annual report or why the penalty, as calculated, should not be assessed. A showing of reasonable cause must be

made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.61(g).

(g) *Notice of the determination on statement of reasonable cause.* (1) The Department, following a review of all the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to this paragraph indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.61(g), 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.61(g), if, within 30 days from the date of service of the notice, an answer, as defined in § 2570.61(c), is filed in accordance with § 2570.62.

(i) *Service of notice.* (1) Service of notice shall be made either:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(2) pursuant to a final order, within the meaning of § 2570.61(g), shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.60 through 71 of this chapter for procedural rules relating to administrative hearings under section 502(c)(2) of the Act.

Signed at Washington, DC this 13th day of June 1989.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 89-14576 Filed 6-23-89; 8:45 am]

BILLING CODE 4510-29-M

29 CFR Part 2570

RIN 1210-AA34

Regulation Establishing Procedures for Administrative Hearings Under ERISA Section 502(c)(2)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that sets forth certain procedures relating to hearings before an administrative law judge, and appeals, in connection with the assessment of civil penalties under section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act). Section 502(c)(2) of the Act authorizes the Secretary of Labor to assess a civil penalty of up to \$1,000 a day against a plan administrator who fails or refuses to file the annual report of an employee benefit plan required to be filed under section 101(b)(4) of the Act. A separate document is also being published today containing a final regulation which describes the manner in which the Department will assess civil penalties under ERISA section 502(c)(2) and certain procedures for agency review.

EFFECTIVE DATE: The regulation is effective for purposes of establishing procedures relating to administrative hearings under section 502(c)(2) of the Act at any time on or after July 26, 1989.

FOR FURTHER INFORMATION CONTACT: David Lurie, Office of Regulations and Interpretations, Pension and Welfare

Benefits Administration, (202) 523-8671, U.S. Department of Labor, Washington, DC 20210, or Vicki Schteir-Dunn, Plan Benefit Security Division, Office of the Solicitor, (202) 523-9596, U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Background

Section 502(c)(2) provides that the Secretary may assess a civil penalty of up to a \$1,000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed under section 101(b)(4).¹ ERISA section 101(b)(4) requires the administrator of an employee benefit plan to file an annual report containing the information required by section 103. Section 103 and the Department's regulations thereunder (29 CFR 2520.103-1 et seq.) describe the content of the annual report.

Section 502(c)(2) also provides that an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary. ERISA section 104(a)(4) provides, in relevant part, that the Secretary may reject any filing upon determining that such filing is incomplete. Section 104(a)(5) describes various remedies available to the Secretary where a filing is rejected and a revised filing satisfactory to the Secretary is not submitted within 45 days.²

On October 17, 1988, the Department published a notice in the *Federal Register* (53 FR 40677) containing proposed regulations § 2570.60 et seq. describing procedures relating to hearings before an administrative law judge, and appeals, on assessment of penalties under ERISA section 502(c)(2). On the same date, the Department also published in the *Federal Register* (53 FR 40674) a proposed regulation (§ 2560.502c-2(a) et seq.) describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(2) and certain procedures for agency review. As discussed in the supplementary information accompanying that publication, the Department believes that the section 502(c)(2) sanction is a valuable additional enforcement tool which is

necessary to ensure compliance with ERISA's annual reporting requirements. In this regard, the adoption of these regulations (§ 2570.60 et seq.) are necessary for the effective implementation of its annual reporting enforcement program.³

The Department received no comment in response to its October 17, 1988 solicitation of comments on proposed regulations § 2570.60 et seq. Therefore, except for two minor clarifications discussed below, the final rules contained herein are being adopted as proposed.

As noted in the supplementary information accompanying the proposed regulations, the Department has published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR Part 18, 48 FR 32538 (1983). The proposed regulations presented for comment several modifications to the rules set forth in 29 CFR Part 18. The proposed modifications were designed to maintain the maximum degree of uniformity with the rules set forth in 29 CFR Part 18, consistent with the rules set forth in 29 CFR Part 18, consistent with the special characteristics of proceedings under ERISA section 502(c)(2). The final rules published herein relate specifically to proceedings under ERISA section 502(c)(2) and are controlling to the extent they are inconsistent with any portion of 29 CFR Part 18.

The following discussion summarizes the specific modifications to the rules in 29 CFR Part 18 being adopted in the final rules contained in this notice and the clarifying changes made to the proposed regulations.

General

The applicability of the procedural rules of 29 CFR Part 18 under section 502(c)(2) is set forth in § 2570.60. In this regard, it should be noted that the procedural rules contained herein apply only to adjudicatory proceedings before ALJs of the U.S. Department of Labor. Regulation § 2560.502c-2, also being published today, sets forth the procedures relating to issuance by the Department of notices of intent to assess a penalty under ERISA section 502(c)(2), as well as procedures for agency review of statements of reasonable cause filed by persons against whom a penalty is assessed. Under the procedural rules contained in this regulation, an adjudicatory proceeding before an ALJ

¹ Section 502(c)(2) was added to ERISA by section 9342(c)(2) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987, Pub. L. 100-203).

² Under section 104(a)(5), the Secretary may, in addition to engaging an independent qualified public accountant or an enrolled actuary, bring a civil action for appropriate legal or equitable relief or take any other action authorized by Title I of ERISA, e.g., the assessment of a civil penalty under section 502(c)(2).

³ Section 9342(d)(2) of OBRA 1987 provides that the Secretary shall issue regulations necessary to carry out the 502(c)(2) civil penalty provisions.

is commenced only when a person against whom the Department intends to assess a penalty under section 502(c)(2) files an answer to a notice of the agency's determination on a statement of reasonable cause. See: § 2570.61(c) and (d) below, and regulation § 2560.502c-2(h).

The definitional section (§ 2570.61) incorporates the basic adjudicatory principles set forth at 29 CFR Part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(2). In this respect it differs from its more general counterpart at § 18.2 of this title. Section 2570.61 states that the term "Secretary" means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. This definition is not intended to suggest any limitation on the authority which the Secretary has delegated to the Assistant Secretary for Pension and Welfare Benefits. By Order 1-87, 52 FR 13139 (April 21, 1987), the Secretary has delegated most of his authority to make final decisions to assess the penalty provided under section 502(c)(2) to the Assistant Secretary for Pension and Welfare Benefits. Thus, the Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits.

The definitions set forth in § 2570.61 are being adopted as proposed, except that the definition of "pleading", at paragraph (m), has been modified to clarify that the notice referred to therein is the notice described in 29 CFR 2560.502c-2(g), i.e., the notice of a determination by the Department on an administrator's statement of reasonable cause. This clarification is intended to remove any ambiguities as to which notice constitutes a part of the pleading in an adjudicatory proceeding before an ALJ.

Proceedings Before Administrative Law Judges

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(2) (the respondent). However, a respondent must comply with the procedures relating to agency review set forth in regulation § 2560.502c-2 before initiating adjudicatory proceedings. In this regard, it should be noted that both the notice of intent to assess a penalty, as described in regulation § 2560.502c-2(c), and the notice of determination on a statement of reasonable cause, as described in regulation § 2560.502c-2(g),

will be issued by PWBA, the agency responsible for administration and enforcement of section 502(c)(2), in accordance with the service of notice provisions described in § 2560.502c-2(i). Regulation § 2570.61 (c) and (d), together with regulation § 2560.502c-2(h), contemplate that adjudicatory proceedings will be initiated with the filing by a respondent of an answer to a notice of the agency's determination on a statement of reasonable cause described in § 2560.502c-2(g).

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, will be governed by regulation § 2570.62. Section 2570.62(c), regarding service of documents by an ALJ, has been corrected in the final regulation to delete the reference to "notices". Notices, for purposes of proceedings under ERISA section 502(c)(2), are issued only pursuant to subsections (c) and (g) § 2560.502c-2, not by an ALJ. The provisions governing service of notices are set forth in § 2560.502-2(i).

Section 2570.64 of the final regulations describes the consequences of default. That section provides that, if the respondent fails to file an answer to the Department's notice of determination, described in § 2560.502c-2(g), within the 30-day period provided by § 2560.502c-2(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Regulation § 2570.64 makes clear that, in the event of such a failure, the assessment of the penalty becomes final.

Section 2570.65 provides with respect to consent orders or settlements that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. That section also provides that the decision of the ALJ which incorporates such consent order shall become final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR Part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements, are adopted in these procedures for adjudications under ERISA section 502(c)(2). The section on the designation of parties (§ 2570.63) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a

civil penalty under ERISA section 502(c)(2).

Section 2570.66 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR Part 18 are to be applied in these proceedings under section 502(c)(2). For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR Part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR Part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(2).

The section on summary decisions (§ 2570.67) provides the requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(2). The section concerning the decision of the ALJ (§ 2570.68) differs from its counterpart at § 18.57 of this title in that it states that the decision of the ALJ in section 502(c)(2) case shall become the final decision of the Secretary unless a timely appeal is filed.

Appeals

The procedures for appeals of ALJ decisions under ERISA section 502(c)(2) are governed solely by the rules set forth in §§ 2570.69 through 2570.71, and without any reference to the appellate procedures contained in 29 CFR Part 18. Regulation § 2570.69 establishes the time limit within which such appeals must be filed, the manner in which the issues for appeal are determined, and the procedures for making the entire record before the ALJ available to the Secretary. Regulation § 2570.70 provides that review of the Secretary shall not be on a de novo basis, but rather on the basis of the record before the ALJ, and without an opportunity for oral argument. Regulation § 2570.71 sets forth the procedure for establishing a briefing schedule for such appeals, and states that the decision of the Secretary on such an appeal shall be final agency action within the meaning of 5 U.S.C.

704. As noted above, the authority of the Secretary with respect to the appellate procedures has been delegated to an Assistant Secretary for Pension and Welfare Benefits. As required by the Administrative Procedures Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(2) of ERISA shall be compiled in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5507, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules which would have a significant impact on a substantial number of small entities. A "rule" under the Regulatory Flexibility Act is one for which a general notice of proposed rulemaking is required under section 553(b) of the Administrative Procedure Act. Under section 553(b) of the Administrative Procedure Act a general notice of proposed rulemaking is not required for rules of agency organization, procedure or practice. Thus, such rules are excluded from the definition of "rule" under the Regulatory Flexibility Act. Since this procedural regulation is a rule of agency procedure or practice it is thus not subject to the requirements of the Regulatory Flexibility Act.

Executive Order 12291

The Department has determined that the regulation does not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of \$100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The Paperwork Reduction Act mandates that agencies provide data with respect to information collection requirements which may be imposed by certain regulatory action. Section 3518(c)(1)(B) of the Paperwork Reduction Act provides that the requirements of that Act do not apply to administrative actions involving specific individuals or entities. The Department has determined that the administrative adjudications which would be

conducted pursuant to the procedures contained in this regulation fall within the scope of this exemption from the Paperwork Reduction Act.

Statutory Authority

The regulation is adopted pursuant to the authority contained in sections 502(c)(2) and 505 of ERISA (Pub. L. 93-406, 88 Stat. 892, 894; 29 U.S.C. 1132(c), 1135).

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Party in interest, Law enforcement, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions.

Final Rule

In view of the foregoing the Department is amending Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2570—[AMENDED]

1. By revising the authority citation for Part 2570 to read as set forth below:

Authority: Section 502(c)(2), 502(i), and 505 of ERISA, 29 U.S.C. 1132(c)(2), 1132(i), 1135, and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

2. By adding in the appropriate place in Part 2570 the following new Subpart C:

Subpart C—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2)

Sec.	
2570.60	Scope of rules.
2570.61	Definitions.
2570.62	Service: copies of documents and pleadings.
2570.63	Parties, how designated.
2570.64	Consequences of default.
2570.65	Consent order of settlement.
2570.66	Scope of discovery.
2570.67	Summary decision.
2570.68	Decision of the administrative law judge.
2570.69	Review by the Secretary.
2570.70	Scope of review.
2570.71	Procedures for review by the Secretary.

Subpart C—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2)

§ 2570.60 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(2) civil penalty proceedings" (as defined in § 2570.61(n) of this subpart) under section 502(c)(2) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by

the Department's Office of Law Judges at Part 18 of this Title will apply to matters arising under ERISA section 502(c)(2) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.61 Definitions.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) "Adjudicatory proceeding" means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) "Administrative law judge" means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) "Answer" is defined for these proceedings as set forth in § 18.5(d)(1) of this title;

(d) "Commencement of proceeding" is the filing of an answer by the respondent;

(e) "Consent agreement" means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended;

(g) "Final Order" means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(2) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c-2(e) within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) "Hearing" means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) "Order" means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(2);

(j) "Party" includes a person or agency named or admitted as a party to a proceeding;

(k) "Person" includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) "Petition" means a written request, made by a person or party, for some affirmative action;

(m) "Pleading" means the notice as defined in § 2560.502c-2(g), the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) "502(c)(2) civil penalty proceeding" means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(2) of ERISA;

(o) "Respondent" means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(2);

(p) "Secretary" means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) "Solicitor" means the Solicitor of Labor or his or her delegate.

§ 2570.62 Service: Copies of documents and pleadings.

For 502(c)(2) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, Suite 700, 1111 Twentieth Street, NW., Washington, DC 20036, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(2) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made

by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.63 Parties, how designated.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as *amicus curiae*.

§ 2570.64 Consequences of default.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c-2(g) within the 30-day period provided by § 2560.502c-2(h) shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Such notice shall then become the final order of the Secretary.

§ 2570.65 Consent order or settlement.

For 502(c)(2) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the

whole or any part of the proceeding. The allowance of such and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefore, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.66 Scope of discovery.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and

that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

§ 2570.67 Summary decision.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material of fact.* (1) Where no issue of a material of fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.69 through 71 of this subpart, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of material of fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.68 Decision of the administrative law judge.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony of such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing

consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(2) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(2) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.69 through 2570.71.

§ 2570.69 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.70 Scope of review.

The review of the Secretary shall not be *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.71 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC this 13th day of June, 1989.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 89-14577 Filed 6-23-89; 8:45 am]

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federal register

**Monday
June 26, 1989**

Part III

Department of Justice

Office of Justice Programs

**Draft Report on Systems for Identifying
Felons Who Attempt To Purchase
Firearms; Notice and Request for
Comment**

DEPARTMENT OF JUSTICE

Office of Justice Programs

Draft Report on Systems for Identifying Felons Who Attempt To Purchase Firearms; Notice and Request for Comment

AGENCY: Office of Justice Programs, Justice.

ACTION: Request for public comment.

SUMMARY: The Office of Justice Programs is publishing for public comment, a Draft Report on Systems for Identifying Felons Who Attempt To Purchase Firearms. This report was prepared by the Task Force on Felon Identification in Firearm Sales.

The Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, section 6213, 102 Stat. 4360) directs the Attorney General to develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system is to be accessible to dealers, but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General is directed to establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General is required to consult with the Secretary of the Treasury, other Federal, State and local law enforcement officials with expertise in the area, and other experts. The Attorney General further is directed to begin implementation of the system 30 days after a report to the Congress, which is due no later than Nov. 18, 1989.

This report to Congress shall describe the system above referred to, together with a plan (including a cost analysis of the proposed system) for implementation of the system. The report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement the system.

Further, the Attorney General, in consultation with the Secretary of the Treasury, is directed to conduct a study to determine if an effective method is available for immediate and accurate identification of other persons who attempt to purchase one or more firearms, but are ineligible to do so by reason of section 922(g) of title 18, United States Code. In conducting the study the Attorney General is required to consult with the Secretary of the Treasury, other Federal, State and local law enforcement officials with expertise

in the area, and other experts. Such study is to be completed by May 18, 1990. This report is to be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation. The following draft report does not address this latter subject.

DATE: Interested persons are invited to submit written comments on or before July 26, 1989. It is requested that such comments be keyed to the Table of Contents which appears immediately following the Foreword.

ADDRESSES: Comments may be mailed to Office of the Assistant Attorney General, Office of Justice Programs, Department of Justice, Room 1290, 633 Indiana Avenue NW., Washington, DC 20531. Attention: Walter W. Barbee, Esq.

FOR FURTHER INFORMATION CONTACT: Walter W. Barbee, Esq., Room 1290, 633 Indiana Avenue NW., Washington, DC 20531. Telephone (202) 724-7788.

Draft Report on Systems for Identifying Felons Who Attempt to Purchase Firearms

June 1989.

Task Force on Felon Identification in Firearm Sales

Assistant Attorney General, Office of Justice Programs, Chairman,
Bureau of Alcohol, Tobacco and Firearms, Bureau of Justice Assistance, Bureau of Justice Statistics, Federal Bureau of Investigation, Immigration and Naturalization Service, National Institute of Justice, U.S. Marshals Service.

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Foreword

The Attorney General is required under Section 6213 of the Anti-Drug Abuse Act of 1988 to report to Congress by 18 November 1989 on a system for the immediate and accurate identification of felons who attempt to purchase firearms. Pursuant to this mandate, the Attorney General requested that the Assistant Attorney General for the Office of Justice Programs (OJP) establish a Task Force on Felon Identification in Firearm Sales to develop a range of options that would comport with the statute.

After preliminary research by components of the Departments of Justice and Treasury, the Task Force held its first meeting on 14 March. I cannot overstate my appreciation for the

superlative efforts of all of the Task Force representatives, especially the staff of OJP's Bureau of Justice Statistics (BJS), which coordinated production of this Report. Under the direction of Dr. Joseph M. Bessette, BJS staff invested considerable talent and expertise, and many evenings and weekends, to produce this document.

The goal of the Task Force was to identify the entire range of issues that ought to be considered before implementing a felon identification system. Although this Report reflects an extensive and thoughtful review, it is important that the views of other Federal, State, and local officials, along with non-government experts, be taken into account before adopting any particular system. While the Task Force has addressed many difficult and complex issues raised during the course of our study, we would be most grateful for any comments on this Report or suggestions for new avenues to consider.

President Bush is determined to close loopholes that "allow deadly weapons to fall into deadly hands." Although an effective felon identification system will contribute toward achieving this goal, the President has proposed a more comprehensive approach, including enhanced penalties for crimes committed with firearms. The President has further recognized that one barrier to an immediate and accurate felon identification system, as noted in this Report, is incompleteness in criminal history reporting. The President has called upon the Federal, State, and local governments to provide timely and accurate reporting of arrest and disposition records. Such a reform would have benefits for a wide range of criminal justice applications.

In Section 6213 of the Anti-Drug Abuse Act, known as the "McCullum Amendment," Congress has similarly recognized the need to develop improved mechanisms to enforce current laws that prohibit felons from obtaining firearms. Recent developments in computerized criminal history information systems and improvements in Automated Fingerprint Identification Systems (AFIS) make possible the immediate identification of felons. The goal of immediately identifying felons in the gun shop will be increasingly feasible as the advance of technology continues at its remarkable pace. It is not the existence of the technology, but rather its costs, the need for trained personnel, and the incompleteness of criminal history records that present the greatest impediments to implementing such systems.

The Task Force does not in this Report make recommendations or reach conclusions. We are keenly aware of the significant concerns about protecting the privacy interests of all citizens, as well as enhancing the ability of law enforcement authorities to protect society from the criminal element. In addition, we recognize that those who select among the options must be mindful of preserving what Attorney General Thornburgh has called the "historic and honorable firearms tradition in this country."

The options contained in this Report fall into two basic categories: those where identification of felons is made at the point of sale versus those involving a pre-approval procedure. Reliability would be greater with prior approval if fingerprint checks are conducted requiring 4-6 weeks. The basic prior approval system, however, is considerably more expensive than the basic point-of-sale system—perhaps two to three times as costly—and raises other significant policy issues as well. It is clear to the Task Force, however, that considerably shorter waiting periods (7 days has been commonly suggested) do not significantly enhance reliability over point-of-sale systems.

The Report discusses options that range from lower-cost systems that minimize the burden placed on firearm purchasers to extremely costly systems that rely upon technology just now becoming available and that raise issues of the type involved in a national identification system. The most elaborate options presented in this report may cost up to \$10 billion or more. But less exotic schemes, albeit less than perfect alternatives, are also presented for consideration. They could be implemented in the near term at substantially less cost.

In assessing this Report, it is important to note that there could be shortcomings in any felon identification system. In a 1984 study for the Department of Justice, it was determined that about five-sixths of convicted offenders in State prisons who admitted to ownership of firearms claimed to have acquired their weapons from sources other than a retail outlet. Through the use of "straw men" who lack a criminal record, and therefore may be eligible to purchase firearms, some felons are able to obtain the tools of their deadly trade. In addition, there is an active "black market" in firearms. Consequently, one major effect of a felon identification system may be to discourage felons from direct purchase and to encourage their use of alternative means to obtain prohibited weapons.

Although many of the options may be subject to intense public policy debate, the Task Force has attempted to remain assiduously neutral in preparing a complete and fair description of various alternatives. Each option presented is meant to be flexible and adaptable to numerous modifications. If this objective has been achieved, then the Report can serve as a skeleton onto which decisionmakers may add the details necessary to produce a viable felon identification system. Such a system must preserve legitimate rights to privacy and firearms ownership, while at the same time enhancing the ability of law enforcement to carry out its responsibility to maintain the domestic peace.

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I. Introduction and Summary of Findings

The Anti-Drug Abuse Act of 1988 (Section 6213(a) of Public Law 100-690, November 18, 1988) requires the Attorney General, in consultation with the Secretary of the Treasury and other Federal, State, and local law enforcement officials, to "develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of Title 18, United States Code." The Attorney General is further required to make a report to Congress describing such a system no later than 1 year after passage of the Act (November 18, 1989) and to begin implementation of the system 30 days later (December 18, 1989). Finally, the Attorney General is required to conduct a study to determine whether an effective method can be designed to identify other persons prohibited by Federal law from purchasing firearms (Section 6213(c)). Such persons include fugitives from justice, those who use or are addicted to illegal drugs, those who have been adjudicated as mentally defective or have been committed to any mental institution, illegal aliens, those dishonorably discharged from the Armed Forces, and those who have renounced their American citizenship. This second study must be submitted to Congress by May 18, 1990.

This report represents the completion of the first phase of the task to design a system for identifying felons who attempt to purchase firearms. Its purpose is to describe a variety of possible options for such a system. It details the essential elements of each option; cost estimates; the impact of the system on firearm dealers and on local, State, and Federal law enforcement agencies; the strengths and weaknesses of each option; and associated legal and policy issues. The options are organized into two basic types: those that involve some kind of immediate verification at the gun shop of the prospective purchaser's eligibility, and those that require some kind of prior approval process and documentation of the purchaser's eligibility. Within each of these categories the options are arrayed

from the lower-cost alternatives to higher-technology, more expensive options.

This report does not address the issue of identifying other persons, besides felons, who are ineligible under Federal law from purchasing firearms. The Task Force decided that this parallel activity ought to be initiated by a private contractor with expertise in criminal justice and information systems. The Bureau of Justice Statistics on behalf of the Task Force has issued a Request For Proposals for such a study. Applications are currently under review.

A. Scope of the Problem

The Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury estimates that approximately 7.5 million new and used firearms are sold at the retail level each year in the United States through 270,000 Federally licensed firearm dealers.

Currently, those who purchase firearms are required to fill out BATF form 4473 at the dealership attesting that they do not fit into any of the categories of persons ineligible to purchase firearms. These forms include identifying information for the purchaser as well as the type and serial number of any firearms purchased. The forms are kept by the dealer and are subject to inspection later by BATF officials. They may be examined, for example, to try to track down the purchaser of a firearm left at the scene of a crime.

At this time there is no Federal requirement for any checking of the eligibility of the purchaser, either before or after the purchase. The dealer relies solely on the purchaser's signature attesting to his eligibility. False statements by the purchaser on the BATF form are a Federal felony punishable by a prison term of up to 5 years.

Although the Federal government does not require a criminal history or any other kind of check of firearm purchasers, the States are free to impose their own requirements. Currently 20 States and the District of Columbia (covering 55% of the Nation's population) stipulate that a pre-purchase criminal history check be made of anyone who wishes to buy a handgun. Four of these States and D.C. include the purchase of long guns in this requirement. These checks are done during a waiting period that ranges from 2 days to 6 months. Two States without waiting periods do a criminal history check only after the purchase is made. Twenty-eight States currently require no criminal history check for firearm purchases.

Any system for identifying felons who attempt to purchase firearms must confront two distinct issues of scope. One is the large number of firearm sales in this country. The estimated annual total of 7.5 million retail sales is equivalent to a daily average of more than 20,000 sales, assuming a 7-day business week. Since many stores are likely to be closed on Sundays and to be busier on Saturdays than mid-week, it is likely that on peak days as many as 30,000 or more firearms are sold. During hunting season peak-day sales may reach 50,000 firearms. Any new system for identifying felons must be capable of handling this heavy volume. Second, such a system must involve either the participation or cooperation (depending on the system) of 270,000 licensed firearms dealers. Although precise figures do not exist, it is estimated by the BATF that 60-70% of these dealers are not gun stores as such, but rather individuals who collect and deal in guns on a small scale (hobbyists, collectors, etc.). These small-scale dealers account for an estimated 20-25% of all firearm sales. Any system that placed special demands on gun dealers in terms of capital expenditures, training, or personnel resources would pose a particular problem for these small-scale operations. Other problems may arise in attempting to identify felons who purchase firearms during gun shows or in other ways outside of normal retail outlets.

B. Key Elements of a Felon Identification System

There are three key elements of the felon identification system mandated in Section 6213 of the Anti-Drug Abuse Act of 1988: (1) the definition of felon, (2) the meaning of "immediate," and (3) the level of accuracy required.

Definition of felon. Section 6213(a) relies on the definition of felon previously specified in the Gun Control Act of 1968 (with subsequent amendments). This definition includes those convicted of a "crime punishable by imprisonment for a term exceeding one year," but excludes (1) certain specified Federal or State offenses relating to the regulation of business practices and (2) any offense classified by the State as a misdemeanor and punishable by a term of imprisonment not exceeding 2 years. Also excluded are those whose conviction has been expunged or set aside and those who have been pardoned or who had their civil rights restored.

This definition presents certain problems for any system that would

access automated criminal history records as part of a clearance process:

First, automated conviction records do not show how long a person could have been sentenced. Approximately one-third of those convicted of felonies in State courts receive no incarceration sentence. Another fifth receive a sentence to a local jail, usually for less than 1 year. In these cases the automated conviction and sentencing records often will not show whether the conviction could have resulted in a sentence of more than 1 year and therefore whether the offense met the Federal definition of a felony.

Second, the offense identifiers contained in automated conviction records may not precisely show whether the offense is one of the business related crimes exempted from the Gun Control Act.

Third, automated criminal history records may not accurately show whether a conviction offense is a misdemeanor punishable by no more than 2 years of incarceration, also exempted from the Gun Control Act.

Finally, automated criminal history records often do not show whether a conviction has been set aside or led to an eventual pardon or the restoration of civil rights.

Immediate. The Anti-Drug Abuse Act does not define "immediate" with relation to the mandated felon identification system. In the absence of such a definition the Task Force has considered options that would meet the immediacy test in two distinct ways. One is a system that would involve on-site inquiries by gun dealers (by telephone, for example) to determine eligibility at the time of purchase with response times of one to several minutes. The other is a system involving a pre-approval mechanism whereby a prospective gun purchaser would apply for documentation (such as a license, permit, or identification card) authorizing him to purchase firearms and then use that documentation each time he makes a purchase. In such a system the application process would take approximately 4-6 weeks. Once the documentation was issued, however, the purchaser could buy a firearm without additional delay at the time of sale.

Accurate. Although the Anti-Drug Abuse Act mandates the "accurate identification of felons," it does not specify the level of accuracy that would be acceptable. Accurately determining who is a convicted felon involves two issues. First is the identification of the person attempting to purchase a firearm. Although standard identification documents such as driver's licenses and credit cards are regularly used in

commercial and banking transactions, these are not definitive evidence of the identity of the bearer. Such documents may be altered or counterfeited or may be originally obtained with false information. Because identification documents cannot absolutely prove identity, "biometric" information (physical evidence such as fingerprints, retinal scans, DNA, etc.) is often used to establish positive identity for various purposes. New technologies, such as automated fingerprint identification systems (AFIS), have dramatically increased the speed and efficiency of using biometric information to establish identity. This report explores the possibility of using biometric information and biometric technologies to identify accurately convicted felons who attempt to purchase firearms.

The second issue regarding the accurate identification of convicted felons is the quality of the criminal history data bases that would have to be accessed to verify that a firearm purchaser was not a felon. A perfectly accurate criminal history data base would be up-to-date (new arrests, convictions, etc. would be entered promptly), complete (all official transactions would be entered), and devoid of any inaccurate data that might, for example, show a conviction in a case that resulted in acquittal or dismissal. The issue of accuracy and completeness of criminal history data bases is addressed in greater detail below.

C. The Quality of Felony Conviction Data

As discussed above, the congressional mandate to establish a felon identification system for firearm sales requires identifying those who have been convicted of a Federal or State offense punishable by imprisonment for more than 1 year (with certain exceptions). How accurate and complete are conviction records? To answer this question requires an examination of where and how criminal history records are maintained.

Criminal history data are maintained in either manual or automated form at three different levels of government: (1) operational law enforcement or criminal justice agencies such as police, prosecutors, and courts; (2) centralized State criminal history repositories (often run by the State police); and (3) the Federal Bureau of Investigation (FBI).

Within the States the criminal history repositories are responsible for maintaining complete and accurate information of official criminal justice transactions. Such transactions include arrests for serious crimes, decisions not

to prosecute, court dismissals, convictions and acquittals, admissions to and releases from local jails and State prisons, and entries to and exits from probation and parole. A 1984 survey of State criminal history repositories conducted for the Bureau of Justice Statistics revealed that more than 35 million criminal history records were maintained in the States (State Criminal Records Repositories, Technical Report, Bureau of Justice Statistics, October 1985). In 11 States the records were not automated, and in most of the others automation was only partial. Half the States reported that they had a fully automated name index to their criminal history records, even when the records themselves were manual. Only seven States reported that they did not have at least a partially automated name index. A recent telephone survey of 20 States conducted for the Task Force in April of this year showed that only 3 of the 20 States had fully automated criminal history records, and half the States had less than 65% of their records automated (A Survey Of Twenty State Criminal History Repositories, Fisher-Orsagh Associates, June 1989). On the other hand, 14 of the 20 States had fully automated name indexes to their criminal history records.

Currently two telecommunications networks link law enforcement agencies to State repositories: the National Law Enforcement Telecommunications System (NLETS) and the network supported by the National Crime Information Center (NCIC). The NCIC network links law enforcement agencies with the Interstate Identification Index (III) maintained by the FBI. Law enforcement agencies use computer terminals to inquire whether a criminal history record exists for a named individual. If such a record exists in the repository of 1 or more of the 20 States that participate fully in the III system, the inquirer is notified and can request the criminal history record through NCIC. In addition to pointing to State data for the 20 fully participating States, the NCIC system makes directly available any other criminal history information from the FBI's own automated records maintained in its Identification Division. These records include information from the other 30 States as well as Federal criminal justice transactions.

The FBI's Identification Division is responsible for conducting fingerprint checks on individuals processed through the criminal justice system and on those who must pass a criminal history check for specified jobs or positions (such as Federal Government employees, child

care workers in some States, etc.). These fingerprint-based criminal justice transactions form the basis for substantial criminal history information. This information is maintained in three basic categories at the FBI. The largest is the group of automated criminal history records for 12.5 million persons arrested for a fingerprintable offense (a felony or serious misdemeanor) for the first time on or after July 1, 1974. Next largest is the group of manual records for 8.8 million persons born in or after 1929 and arrested for a fingerprintable offense for the first time before July 1, 1974. The smallest is the group of manual records for 3.6 million persons born before 1929 and arrested for a fingerprintable offense for the first time before July 1, 1974. The FBI maintains an automated name index both to the 12.5 million automated files and to the 8.8 million manual files of those born in or after 1929. There is no automated name index for the final group. Currently, the automated name index and the automated files for the 12.5 million persons arrested for the first time on or after July 1, 1974, are linked to the NCIC system. Thus, those who make inquiries through NCIC will access these automated records but not any of the manual records maintained by the Identification Division.

Given these data systems, the law enforcement official who wants immediate access to felony conviction data has two basic options: to access directly the automated records maintained by his own or another State or to access interstate and Federal records through the NCIC system. He may, of course, do both. The problem, however, is that the conviction records accessed through these computerized methods are not complete.

These conviction records are incomplete for two distinct reasons. First, as noted above, many records at both the State and Federal levels are not automated. Among States recently surveyed, an average of about one-third of criminal history records were not automated; at the FBI the proportion is about one-half. (It should be noted, however, that the automation of the records of young, active offenders is much more extensive than the records of older, less active offenders.) Second, and equally important, convictions, as well as other final dispositions, are often not reported to the State central repository or to the FBI even when an automated record exists of the individual's arrest. The FBI, for example, estimates that approximately one-half of the arrest charges in their records do not show a final disposition. Data from the

1984 survey of State repositories cited above show that about 34% fewer final dispositions than arrests were reported to the repositories in 1983. (Ideally, each arrest should eventually be matched by a final disposition.) In several States the proportion of underreporting was as high as 70-80%. Moreover, the April 1989 survey of 20 States revealed that 8 of the 17 States able to supply a figure estimated that at least 20% of convictions within the State were not reported to the repository.

Based on the combination of partial automation of criminal history records and underreporting of convictions, it is reasonable to estimate that nationwide the records of approximately 40-60% or more of felony convictions are not currently available in automated form and thus not immediately accessible by law enforcement authorities. Such a high level of undercoverage renders impracticable a felon identification system that relies principally on immediate access to automated conviction records.

This problem of undercoverage, however, can be significantly mitigated if the manual records maintained by the State repositories and the FBI are accessed. There are two ways to access these manual records. One is to use the automated name index to the manual records, if one exists, to identify a record and then manually retrieve and examine it. The other, more common, method is to do a fingerprint search based on a full 10-print fingerprint card. If a fingerprint match is found, then the manual file can be retrieved and examined. This method is by far the more reliable since it establishes a positive identification. Because both of these methods require direct human intervention at some stage, they are not as immediate as a computer-based search of automated files. For example, the FBI currently requires 14 business days to process a fingerprint card, and, depending on the location of the requesting agency, an additional 4-10 days may be required for mail handling. (For the sake of simplicity the rest of the report assumes an average of 7 days for mail handling.) A new automation system at the FBI holds the promise of reducing fingerprint processing time to somewhere between 2 and 10 business days, depending on a proposed expansion of computer facilities.

While accessing manual records reduces the undercoverage that exists in a search of only automated files, it does not eliminate the problem. As indicated above, a significant proportion of final dispositions are not reported to the State repositories or to the FBI for

inclusion in either automated or manual records. In these cases the law enforcement official may be able to get the missing disposition information directly from the court or prosecutor's office for the jurisdiction where an arrest took place, but not through an on-line computer-based search.

D. Impediments to Creating a Perfect System

A perfect system for immediately and accurately identifying convicted felons who attempt to purchase firearms would have three key elements: (1) a complete and accurate automated data base showing every conviction for a State or Federal offense punishable by more than 1 year in prison and clearly showing the specified exceptions (such as business related offenses, misdemeanors punishable by 2 years or less in prison, convictions set aside or pardoned, and cases where civil rights were restored); (2) a means for positively verifying the identity of a prospective purchaser at the time of the sale of the firearm; and (3) a mechanism for immediately linking identifying information about the purchaser with the information in the data base.

Such a perfect system is not feasible or practical in the foreseeable future. There are several reasons for this conclusion.

First, as the above discussion has shown, automated conviction records are too incomplete to rely on to identify convicted felons. Moreover, even when conviction information is available it will not necessarily show whether that offense meets the Federal definition of a felony or whether the conviction was subsequently set aside or the offender had his civil rights restored.

Second, positive verification of identity at the time of the gun sale would necessarily require the collection of biometric information by the gun dealer. Based on the Task Force's review of state-of-the-art identification technology and its survey of the capabilities of the State repositories, it appears that the only feasible way to do this is with a 10-finger live scan that digitizes the prints and then transmits the digital representation over telephone lines to repositories capable of receiving this information and automatically searching their data bases for a match. Machines capable of collecting and digitizing a full set of prints currently cost approximately \$35,000-100,000 each. This is prohibitively expensive to require of all gun dealers. If purchased by the government for use by 270,000 gun dealers, current prices would require an investment of at least \$9

billion. No doubt, mass production would reduce the cost; nonetheless, the sophisticated optics and computer hardware used in these machines would limit the cost reductions. In addition, it takes a substantial amount of training to operate one of these machines, thus raising questions about the logistics of training 270,000 gun dealers. Moreover, because it takes about 6 minutes to get each set of 10 prints, gun dealers that average 10 sales an hour would have such a machine running constantly and would require an additional full-time trained employee just to operate it. This would further raise the cost to the dealer.

(Note that machines that take and digitize a single print for communication to an external data base are much less expensive—approximately \$3,000–6,000—but these are not suitable for matching a single individual to a data base of millions of offenders. Such single-print searches are extremely computer-intensive, often requiring hours to complete, and are unreliable for proving identity in a search of a massive data base. Currently, such single-print searches are used as an investigative tool in serious crimes to produce a list of possible identities or are used for security purposes to compare one individual's prints against those already on file.)

Finally, even if sophisticated AFIS technology were made available to gun dealers, it would be necessary to convert and/or upgrade the technology in most of the State repositories and the FBI so that digitized fingerprint information could be received and compared to fingerprint-based data bases. This would be a massive and expensive operation.

E. Practical Alternatives

What, then, are the practical alternatives for establishing a reasonably effective system for identifying convicted felons who attempt to purchase firearms? The Task Force has identified two different kinds of systems that would meet the Congressional mandate and allow for the beginning of implementation by December of 1989. Both types of systems would rely on currently available identification techniques and technologies but would be open to improvements in identification documents and methods, including those involving biometric information. The two basic options are identified here as Option A and Option B. The body of the report includes a sample of possible modifications of these two basic options.

Option A: Point-of-sale approval through a telephone check. Option A provides for on-site, immediate access to automated name indexes maintained by State repositories and the FBI through telephone calls to the repository of the State in which the sale takes place. State officials would use computer terminals tied into their State records and into the NCIC and NLETS networks to determine whether there was an arrest record either within or out of State for someone with the name, race, sex, and date of birth of the prospective gun purchaser. If there was no "hit" during this immediate verification process, the gun dealer would be notified over the phone and the sale would be made. If there was a "hit," the sale would not be allowed at that time. If the prospective purchaser wished to pursue the sale, he would seek clearance through a secondary verification process. Under this procedure fingerprints would be taken at a local law enforcement agency and sent to the State repository. A fingerprint search would be conducted by the State and then by the FBI. Any criminal history records obtained through the fingerprint check would be examined by State officials for an indication of a conviction for a disqualifying offense. Incomplete information would be supplemented by inquiries to courts or prosecutors' offices. If no evidence of a conviction for a disqualifying offense was found, a Certificate to Purchase would be issued to the prospective buyer (valid for up to 1 year). The purchaser would present this documentation to the gun dealer certifying his eligibility.

The entire secondary verification process could take as long as 4–6 weeks. It is estimated, however, that approximately 84–88% of prospective gun purchasers would successfully pass the initial verification and thus would not have to go through the secondary verification. Reasonable modifications of this system might reduce some of the burdens placed on the eligible purchaser.

Option B: Firearm Owner's Identification Card. Option B is essentially the same as the secondary verification of Option A. The difference is that everyone who wanted to purchase a firearm would go through a fingerprint-based clearance process. If there was no evidence of a felony conviction, as defined by Federal law, the State would issue a Firearm Owner's Identification (FOID) Card valid for up to 3 years. This card would be presented whenever the bearer wished to purchase a firearm. The chief advantage of Option

B over Option A is that it eliminates the problem of the false "hits" that occur in a name-based automated criminal history check because of mistaken identity. This option also has several disadvantages. The chief disadvantage is that it puts every prospective gun purchaser through a 4–6-week clearance procedure every several years. It also places much greater demands than Option A on existing criminal justice identification systems and is thus considerably more expensive.

The Task Force has also identified a variety of higher-technology variants of these two basic options. They are summarized here.

Option A1: Computer terminal access by gun dealer to disqualifying information. This option would replace the telephone calls of Option A with direct computer terminal access to an intermediary computer that would review the State and Federal criminal history indexes and transmit notices of approval or denial to the dealer. This would be considerably more expensive than Option A in the short run and would present no particular operational advantages over it.

Option A2: Touch-tone telephone access by gun dealer to disqualifying information. This option is similar to Option A1 but substitutes a touch-tone telephone for computer access. Like Option A1 it is more complicated and expensive than Option A, at least in the short run, without any corresponding advantages. It is possible that in the long run Options A1 and A2 would be less expensive than Option A by reducing the need for computer operators at the State repository to respond to the calls from the gun dealers.

Option A3: Live scan of fingerprints by gun dealer. This option, requiring that fingerprints be taken directly at the point of sale and digitized for transmission to the record repository, is similar to the biometrically-based system described previously in the discussion of a perfect felon identification system. While it would provide the greatest assurance of a positive identification, it would be the most difficult and expensive to implement.

Option A4: Biometric identification card. This option is not so much an alternative to the basic Option A as an additional feature that could be added to it. Under this option positive identification would be enhanced at the gun dealership by the comparison of a single fingerprint of the prospective purchaser with digitized information

from a biometrically-based identification card issued by the State.

Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer. This option combines elements of both prior approval and immediate check.

Prospective gun purchasers would go to a designated law enforcement agency for a criminal history clearance. The agency would conduct a live 10-print fingerprint scan using AFIS equipment (as in Option A3). The digitized fingerprint information would be transmitted to the State repository and the FBI to check for arrest and conviction records. Applicants who passed this clearance would be issued a FOID card. Those wishing to purchase a firearm would present the FOID card to the gun dealer. Equipment at the dealership would allow a comparison of a single fingerprint from the purchaser to digitized information on the card (as in Option A4).

Option B2: Smart card containing disqualifying information. Under this option every adult would carry an identification card issued by the State of residence, such as a driver's license, that would have electronically imprinted identifying information, including biometric data and information such as felony convictions that would legally bar someone from purchasing a firearm. At the gun dealership such a card would be placed into a reader to verify identification (by comparison with a single fingerprint) and to determine whether the bearer was prohibited from purchasing a firearm.

F. Cost Estimates

All of the options detailed here would place substantial new demands on Federal and State criminal history repositories and law enforcement agencies. In the few months that the Task Force has been operating it has not been possible to develop precise estimates of the cost implications of each of the options. Nonetheless, some broad estimates have been derived. These should be taken only as a general indication of the cost implications of a felon identification system. They are conservative estimates that may have to be revised upward as the implications for local, State, and Federal practice are more fully explored.

Option A, which is judged to be the least expensive of the various possibilities, would have projected combined local, State, and Federal start-up costs of \$36-44 million. Annual operating expenses would be an estimated \$53-70 million. Other variants of Option A would cost some additional amount over the base system. (There is

the possibility, however, that a more fully automated system that electronically connected gun dealers to the necessary disabling information would in the long run prove less expensive than Option A by reducing ongoing personnel costs.)

Option B, the basic pre-approval system, would have total estimated start-up costs of \$148-153 million, and additional annual operating costs of \$136-161 million. The two other variants of Option B would likely cost considerably more.

Note that if existing criminal history checks for gun purchasers are taken into account, the actual new cost would be somewhat lower than these estimates—perhaps 8-12% less for operational costs.

Part, or all, of these costs might be recouped by charging the gun purchaser a special fee. Assuming 7.5 million gun purchases per year, a fee in the range of \$7-9 per firearm might cover the annual operating costs of Option A (although not the start-up costs). Assuming 6 million FOID cards issued in the first year under Option B and 5 million issued each subsequent year, a fee in the range of \$27-32 per application would be necessary to cover annual operating costs.

The following summarizes cost information for the two basic options and those higher-technology variants for which enough information was available to approximate at least partial system costs:

Options	Start-up costs (millions)	Annual operating costs (millions)
A: Telephone check by gun dealer.....	\$36-44	\$53-70
A3: Live scan of fingerprints by all gun dealers.....	9,590-27,144	3,047-8,347
A4: Biometric identification card checked by all gun dealers.....	198-368	102-168
B: FOID card.....	148-153	136-161
B1: Live scan by law enforcement and biometric check by all gun dealers...	344-572	203-295

G. Implementation issues

There are four broad possibilities for implementing a felon identification system: (1) To create a self-standing Federal system that is run entirely by Federal officials; (2) to mandate a cooperative Federal-State system in which State officials carry out a substantial portion of the criminal history checks; (3) to establish a mandatory Federal standard that States could meet in a variety of different

ways; and (4) to offer the States several models for a cooperative Federal-State system and make Federal resources and leadership available to assist the States.

(1) The Task Force did not focus its research efforts on the creation of an independent Federal system because 90% or more of arrests and convictions in the United States are handled by State and local officials. Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State and to determine whether a conviction meets the Federal standard for disallowing a firearm purchase. Moreover, State officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential to an effective felon identification system.

(2) Given the necessity for active State involvement, the Federal government could create a felon identification system by mandating that the States adopt a particular system, such as one of those detailed here or a modification thereof. Under this implementation strategy, the Federal government would select a felon identification system and each State would be required to work with Federal officials to implement it. The result would be a uniform system in each of the 50 States.

(3) Another possible implementation plan is to allow variation across the States in the kind of system established as long as each State's system met certain minimum Federal standards. As noted above, 20 States and the District of Columbia (covering more than half of the Nation's population) currently conduct some kind of criminal history check for those who wish to purchase handguns. There is, however, substantial variation among these systems. In some States checks are conducted by local authorities; in others by State authorities. Some States access only State records when conducting the check; others also access Federal records. A few States require fingerprints; most do not. Of these existing systems, some might be as effective as the options detailed in this report in keeping convicted felons from purchasing firearms through legitimate retail outlets. Others might be easily upgraded.

All of the options presented in this report meet at least two minimum standards: all firearm purchases from Federally licensed dealers are covered.

and a name check of both State and Federal automated data bases is conducted for evidence of an arrest for a serious crime (such checks usually also include date of birth, race, and sex). It appears that only four States and the District of Columbia currently meet both standards.

(4) Finally, the Federal Government could take a leadership role in designing one or more felon identification systems and in encouraging, but not mandating, State cooperation. Under this strategy the Federal Government would expand its own resources at the FBI and BATF to make such a system(s) possible and would provide expertise and technical assistance to State and local officials.

H. Legal and policy issues

Whatever option is chosen, new legislation would be required to address a number of issues: (1) To mandate a specific system on the States, to establish minimum Federal standards, or to base a system on voluntary compliance by the States; (2) to establish the funding mechanism for carrying out the criminal history checks, possibly involving user fees by gun purchasers; (3) (under some options) to authorize the release of limited criminal history information to gun dealers (e.g., whether there is a "hit" on a name search of automated arrest records); (4) to specify penalties for gun dealers who improperly disclose criminal history information obtained as part of a felon identification system; (5) to determine the minimum acceptable level of accuracy for the system; (6) to establish a statutory right of appeal for the prospective gun purchaser from any adverse decision, including the right to inspect records; and (7) to set forth policy regarding the use of information generated by a felon identification system, including any fingerprint data collected. (This is an illustrative, not an exhaustive, list.)

I. Solving the problem of felons acquiring firearms

In evaluating the various possibilities for identifying convicted felons who attempt to purchase firearms, it must be recognized that even a perfect felon identification system would not keep most felons from acquiring firearms. One study of convicted offenders in State prisons found that about five-sixths of those who admitted to ownership of a firearm claimed to have acquired the weapon through some means other than purchase through a retail outlet (*The Armed Criminal in America*, National Institute of Justice, November 1986). These other means included the black market, thefts, and

informal transactions with friends or associates such as a purchase or trade. An effective felon identification system will do little to eliminate or reduce these off-the-record transactions. Indeed, a particularly effective system may force even more felons to turn to the black market for their weapons or to use accomplices without a criminal record to purchase guns for them. Nonetheless, a system that keeps felons from purchasing weapons over the counter may at least increase the difficulty, and perhaps the costs, of acquiring weapons for use in crime and may, in fact, deny weapons to some number of less sophisticated criminals unable to access the black market or to find willing accomplices.

II. Options for a Felon Identification System

A. Section 1. Schematic Overview

In considering the design of a system for identifying felons who attempt to purchase firearms, it is useful to begin with a general overview of the basic components. Any final system would be comprised of an approval procedure, a designated processing organization, access to data sources, a designated decision organization, final action, and an appeals process. Different systems are basically different combinations of options among these components. (See Exhibit 1.)

Approval procedures. Approval to purchase a firearm may occur either prior to an individual's trip to a gun dealer or at the point of sale in the shop. Prior approval schemes include the issuance of: (1) An identification card, which establishes in advance that the individual is eligible to purchase a firearm, (2) a certificate to purchase, which permits an individual to purchase a firearm for a limited period, or (3) a smart card on which basic data are encoded that establish an individual's eligibility. Point-of-sale approval procedures may involve telephone checks by the gun dealer of criminal history records through local or State law enforcement agencies or a regional office of the Bureau of Alcohol, Tobacco and Firearms. Direct checks of data bases could also be made over touch-tone telephone lines: dealers would access data with a series of identifying numbers and receive approval or denial from a State or Federal computer system. Dealers could also make electronic checks through terminals or automated biometric devices with direct lines to the National Crime Information Center (NCIC) and State criminal history repositories.

Processing organizations.

Identification systems for firearm purchases may employ one or more organizations that process an application and search the criminal history data bases. For example, applicants may be required to appear in person at a local law enforcement agency, such as the police or sheriff's department, to obtain a permit or identification card. This agency would search local files and access State or Federal files through the NCIC and NLETS communication systems. Alternatively, the applicant could apply at the point of sale, and the gun dealer would call a local, State, or Federal agency to receive approval for the sale. A slightly different system could designate the regional offices of the Bureau of Alcohol, Tobacco and Firearms as processing agents for firearms applications and as conduits through which access is gained to State or Federal data bases.

Finally, a wholly separate agency could be established at the State or regional level to function as a Felon Identification Center.

Data sources. Currently, two basic sources of criminal history data (State and Federal) can be accessed to determine if an applicant has a disqualifying conviction. Any system of identification for firearm purchases must specify which data bases are to be used and how they will be accessed.

Most States maintain a repository of criminal history record information (CHRI); in a few States the repository is maintained by a municipality or consortium of local law enforcement agencies. States also maintain "hot files," listing outstanding wants and warrants. The degree of automation of the CHRI files varies considerably from State to State: some repositories are completely automated, others partially automated, and a few States maintain only paper files.

Criminal history data and "hot files" are also maintained at the Federal level within NCIC and the Identification Division of the FBI. The Federal files contain records from the applicant's State of residence as well as Federal and out-of-State records. These records may be accessed through fingerprint searches (via the mail) or through electronic name and date-of-birth searches (via NCIC access to the Interstate Identification Index [III]).

Finally, a new data source could be created for the specific purpose of identifying individuals with disqualifying convictions and other individuals prohibited from buying firearms. A national center, for example,

could create and maintain an index, which would merge indexes from current State and Federal data bases, mental health records, and records kept by the Immigration and Naturalization Service. This national index of individuals prohibited from purchasing firearms would be updated continuously. It would serve as the sole data source for Federal regulation of firearm purchases.

Decision organizations. Once the processing organization has checked the data bases, the data must be interpreted and a decision made. The processing organization may not necessarily be the decision organization. Local law enforcement may evaluate the data or rely on the State police or identification bureau to do so. In response to problems of evaluating out-of-State and Federal records, other system designs may designate regional or Federal agencies as the decision organization.

Action. The designated decision organization must either approve or prohibit an individual from purchasing a firearm. Depending on the type of approval system, the organization would transmit the decision to the applicant directly or through the gun dealer. Potential options include issuance of a card, a certificate, a notice of denial, or an electronic message of approval or denial.

Appeals process. Once an applicant receives final notice that the application has been denied, he may appeal this decision. The designated appeals organization may be the local police, a State agency, a regional office of BATF, or some other agency. Legislation may also establish a right to a judicial appeal once administrative appeals are exhausted.

Basic options and variants. Although there are numerous possible combinations among these components, the Task Force has detailed two basic options: Option A, which is a point-of-sale telephone check by gun dealers with secondary verification, and Option B, which is a pre-approval system requiring a firearm owner's identification card. The descriptions presented here specify for each basic option the type of approval procedure, the processing organization, the data sources, and the final decision organization. There is additional discussion of specific characteristics, estimates of volume, cost figures, advantages and disadvantages, and potential modifications. Each basic option is followed by several higher-technology variants.

II. B. Section 2. Point-of-Sale Approval Systems

(1) Option A: Telephone check by gun dealer with secondary verification. A cooperative Federal and State system would be established requiring that gun dealers obtain clearance from a designated law enforcement agency at the time of sale of all firearms. This system would include both (1) An immediate telephone check of automated criminal history records by gun dealers through a designated law enforcement agency and (2) a secondary fingerprint-based verification procedure for all individuals rejected through the initial telephone check. Each system would have the following elements:

Telephone check (Exhibit 2). 1. At the time of purchase each gun dealer would require the buyer to fill out an application and show two pieces of identification, with at least one having a current photo.

2. The gun dealer would be required to telephone a State law enforcement agency for a criminal records check. Appropriate security procedures (such as a call-back procedure or password system combined with additional dealer identification and access codes) would be introduced to protect against unauthorized entry and dissemination.

3. The designated State law enforcement agency would access existing telecommunications networks to check the master name index within the State of purchase and the FBI's Automated Identification System—Phase III (AIS-III). The AIS-III index contains pointers to the Interstate Identification Index (III) for out-of-State arrests. Both State and Federal "hot" files would also be checked.

4. Initial checks would be made of the State and Federal master name indexes. These indexes contain identifying information on persons previously arrested for "printable" offenses (felonies and serious misdemeanors). Since these are arrest-based indexes, some of the applicants found on these indexes (e.g., those arrested for a felony but not convicted, those convicted of misdemeanors only, and those who were pardoned) will be qualified to purchase firearms. In those States in which criminal history files are automated, it may be possible to access and evaluate individual files while the gun dealer remains on the phone. It may also be possible to access similarly and evaluate some out-of-State records. (Note that currently several hours are often required to obtain records for individuals arrested in the 20 III States.)

5. The gun dealer would immediately (i.e., within a few minutes) receive

notice of permission or denial of sale from the designated law enforcement agency. The dealer would receive a transaction number for each inquiry and be required to record the number on each application. Regardless of whether or not the sale was made, the dealer would be required to retain a copy of the application and a record of the telephone inquiry. The designated law enforcement agency would retain records of all inquiries for use in audits of gun dealers. Names of applicants would not be retained on the inquiry data base.

6. If the sale was denied, the gun dealer would instruct the applicant that a Certificate to Purchase may be obtained from a local law enforcement agency.

Secondary verification (Exhibit 3). 1. An applicant who previously failed a telephone check would be required to appear in person, with two pieces of identification, at a law enforcement agency within the jurisdiction of the applicant's legal residence.

2. Each applicant would be fingerprinted, and the fingerprint cards would be mailed to the State criminal history repository.

3. The State agency would access in-State automated and manual criminal history records and also send the fingerprint cards to the FBI for a check of out-of-State records.

4. If an FBI rap sheet was found for the applicant, the State agency would receive by mail a copy of the records maintained by the FBI's Identification Division. These records would include Federal criminal justice transactions as well as transactions in the 30 States that do not participate in the Interstate Identification Index (III). Additional information from non-III participating States could be sought directly from these States through NLETS. If the applicant had been arrested in a III participating State, as indicated by the FBI records, the State agency would request via NCIC additional records from such a State. If the records so obtained were insufficiently complete to make a final determination of eligibility (e.g., lacking disposition data), additional information could be sought by telephone or mail inquiry to the relevant courts or prosecutors' offices.

5. Based on all the available information, the State agency would make a determination whether there was evidence of a disqualifying conviction and issue either a Certificate to Purchase or a Notice of Denial. The Certificate to Purchase would be valid for no more than 1 year. The designated State agency would maintain a data

base of all certificates issued. Individuals could renew their certificates by submitting a written application—no fingerprints would be required. Names of individuals not renewing their certificates would be purged from the data base at the end of 1 year.

6. Copies of the Certificate to Purchase or Notice of Denial would be sent to the applicant and to the local law enforcement agency submitting the fingerprint card.

7. If a Notice of Denial was issued, the applicant would be informed of his right to appeal (see Part II, Section 4.)

8. If the applicant possessed a Certificate to Purchase and decided to purchase a firearm, the gun dealer would be required to verify, prior to sale, the identity of the purchaser—through two pieces of identification—and the validity of the certificate—by calling the designated State agency to check the validity of the Certificate to Purchase against the certificate data base.

Data sources. The initial telephone check would scan the State and Federal automated name indexes and would access whatever automated rap sheet data could be immediately retrieved. Access to this information would be through a designated law enforcement agency only. (See Part IV, Section 3 and Exhibit 4 for an overview of national access to criminal history files.)

Obtaining a complete check of out-of-State records would require expanding the FBI's Automated Identification System-Phase III (AIS-III), which is accessed through the NCIC telecommunications network. Currently, only those individuals first arrested on or after July 1, 1974, are listed in the AIS-III master name index (approximately 12.5 million persons). The records of approximately 8.8 million individuals born in or after 1929 but arrested before July 1, 1974, are not currently accessible through the NCIC network.

In general, the current name indexes to criminal history data at the State and Federal level are arrest-based data sets only, containing identifying information on individuals arrested for felonies and serious misdemeanors. In some instances, for example, if the charges are dropped or if the individual is acquitted or pardoned, States may purge the indexes of these names. With few exceptions, these indexes do not contain information on convictions.

The secondary verification procedure utilizes all criminal history data bases at the State and Federal levels, including automated and manual records. In addition these may be supplemented by

direct queries to courts and prosecutors' offices. State law enforcement officials, who are in the best position to interpret criminal history records, will determine whether there is sufficient evidence of a conviction that meets the Federal standard for disqualification.

An inquiry data base would be created and maintained by the designated State agency. This data base would record basic information on all inquiries from the gun dealers. For each inquiry, a dealer's license number, a transaction number and date, and an outcome code (i.e., approval or denial) would be recorded. This information would be used by BATF for subsequent audits of gun dealers. Names of applicants would not be retained in this data base.

This data base containing a list of the Certificates to Purchase and Notices of Denial would also be created and maintained by the designated State agency. This data base would contain basic information on individual applicants who had previously received a Certificate to Purchase or Notice of Denial. It would contain an applicant's name, date of birth, race, sex, a flag indicating approval or denial, and (when appropriate) a number assigned to the Certificate to Purchase. The data base could be updated continuously for subsequent disqualifying convictions. After 1 year the Certificate to Purchase would expire. A new certificate would be issued if the applicant submitted a renewal form and passed subsequent State and NCIC checks. Identifying information on all other holders would be removed from the data base after 1 year. This data base would be used by the State agency to verify the validity of certificates at time of purchase. The data base would also be used to detect those individuals who were issued a Certificate to Purchase but who were subsequently convicted of a disqualifying offense.

This data base would also contain names of individuals issued a Notice of Denial. Such a data base could detect repeated attempts by disqualified applicants to purchase a firearm. Criminal penalties could then be levied against those individuals who attempted to purchase a firearm after receiving a Notice of Denial.

Verification and controls. Gun dealers would be required to maintain copies of approved applications and logs of inquiries. However, gun dealers would not keep copies of rejected applications, which would be sent to the State. Dealers would receive a transaction number for each inquiry and be required to retain this number for subsequent audits. No sale could be made without

this number. The designated State law enforcement agency would be required to maintain records on all inquiries.

Gun dealers would be subject to criminal penalties for any false inquiry or disclosure of any information received from a telephone check.

Procedures would be adopted to verify the identity of gun dealers to the State agency. A call-back procedure could be used; for example, the gun dealer would call the State agency, provide the dealer codes (including dealer identifiers from State or Federal licenses), hang up the phone, and wait for a return call from the State agency. An alternative procedure is a single-call method, with a variable password system and dealer codes linked to a data base maintained by the State agency.

Positive identification. Positive identification of applicants by gun dealers prior to the initial telephone check will be limited by the quality of identification documents presented and by the range of data elements accessible on the State and Federal master name indexes. Currently, searches of the automated indexes are limited primarily to the applicant's name, date of birth, race, and sex. The use of additional data elements, such as place of birth, scars and marks, height, weight, eye and hair color, and miscellaneous numbers (e.g., social security number or driver's license number), depends on whether they appear on existing master name indexes and on their use and accuracy on identification documents. Despite problems of identifying individuals based on name and date of birth, numerous States currently conduct name-based checks on gun applicants. (See Part IV, Section 2 for a description of current State practices in conducting criminal history checks of prospective firearm purchasers.)

Additional efforts to ensure positive identification by the dealer at the time of purchase could include placement of the applicant's fingerprint on the application form (BATF form 4473, Exhibit 5). The dealer could roll the print of the applicant's right index finger at time of application. Though this print would not be submitted to the State identification bureau, it may serve as a deterrent to those possessing fraudulent identification cards. In the future the print on the application could be used in combination with an identification card containing a similar print. (See Option A3 for further elaboration of fingerprint checks by dealers.)

Even if positive identification could be established by the dealers, the State agency would face problems of

"multiple hits" (more than one person on the name index with a similar name, date of birth, sex, and race) and "false hits" (a person on the name index other than the applicant with a name and date of birth similar to the applicant's). Estimates obtained from the FBI, detailed below, indicate that approximately 50% of the cases where persons appear to have a criminal history record based on an initial name search are eventually found to be false hits.

Procedures similar to those employed in Illinois (see Part II, Section 2) may be adopted to reduce the number of false hits. Illinois uses place of birth and additional identifying features such as eye color, hair color, height, and weight to reduce identification problems. The more identifying information used, the less likely there is to be a false hit.

Estimates of volume. Figures obtained from the Bureau of Alcohol, Tobacco and Firearms indicate that approximately 7.5 million new and used firearms are sold annually. This figure represents a 10-year average of domestic firearms production (adjusting for imports and exports) plus used gun sales (estimated at about 50% of all sales of new firearms). The 7.5 million annual purchases is equivalent to a daily average of more than 20,000 sales. Since many stores are likely to be closed on Sundays and to be busier on Saturdays than mid-week and since firearm sales increase during hunting season, the number of sales may reach as high as 50,000 on peak days.

Assuming that a name check will be conducted prior to every purchase, the number of inquiries into the Interstate Identification Index (AIS-III) would increase by approximately 70% from the current level of 10.7 million inquiries a year. However, relative to all inquiries received daily by NCIC, including "hot" files as well as AIS-III inquiries, name checks of gun applicants would increase the total number of inquiries by about 5% at the peak time during hunting season. The 50,000 additional inquiries resulting from gun applicants are small relative to the recent 1-day record of 1.1 million inquiries into NCIC.

The number of additional fingerprint cards would vary depending on the hit rate from the name check. This rate can only be estimated indirectly. Assuming that the final hit rate on gun applicants will resemble the rate for fingerprint-based checks currently conducted by the FBI on applicant cards, an estimated 6-8% of all applicants will be rejected. (There are currently no National data on ultimate rejection rates for gun applicants.) Further, if half of all initial hits in a name and date-of-birth check of

gun applicants are false hits (based on FBI estimates for all applicants), then the expected initial hit rate should be between 12% and 16% for all gun applicants. Finally, not all of the initially-rejected applicants may submit fingerprints for the secondary verification—perhaps 10-14% of all applicants will submit fingerprint cards.

The number of applicants for a Certificate to Purchase will be less than the number of purchases, since applicants may buy more than one firearm a year. Precise counts of the annual number of purchases per buyer do not exist. However, if we assume that the majority of applicants will buy only one firearm and a relatively small number will buy many firearms, the estimate of 1.25 firearms per buyer may be a reasonable expectation. Such an estimate suggests that an estimated 6 million individuals buy the 7.5 million firearms sold annually.

As a result of the above assumptions, we may expect approximately 725,000 fingerprint cards on gun applicants as a result of a rejection from the telephone inquiry by the dealer. Assuming the current 5-day week at the FBI's Identification Division, this represents an additional 3,000 fingerprint cards per day—an increase of nearly 10% in the number of cards received daily.

Additional system flows. The estimate of 7.5 million new name searches of automated records and 725,000 new fingerprint checks that would be generated by this option ignores the fact that many States currently conduct criminal history checks of gun purchasers. Twenty-two States and the District of Columbia (covering more than half of the Nation's population) now conduct a pre- or post-purchase criminal history check. Thirteen States and D.C. access Federal and interstate records through NCIC. Six States and D.C. take fingerprints. Four States and D.C. include the purchase of all types of firearms; the others, only handguns.

Presumably, if Option A were adopted, the new criminal history checks would not be conducted on top of existing checks, for this would create an unnecessary redundancy. Either (1) States would modify their existing systems and criminal history checks to conform to the elements of Option A, or (2) the Federal mandate would accept current pre-approval systems as effectively accomplishing the goals of Option A if certain minimum standards were met. In either case if current practice is taken into account, the net new impact on Federal and State repositories would be somewhat less than the estimate of 7.5 million new

name searches of automated records and 725,000 new fingerprint checks.

Criminal history checks of gun purchasers currently conducted by the States account for approximately 15% of the projected 7.5 million annual inquiries into NCIC under Option A and 8% of the 725,000 fingerprint checks at the FBI. As a result, the additional impact of Option A on NCIC and the FBI Identification Division is estimated at 6.4 million inquiries and 664,000 additional fingerprint cards. At the State level current practices account for a somewhat greater proportion of the inquiries required by this option. An estimated 20% of the total 7.5 million name and date-of-birth searches projected for State identification bureaus under Option A are currently conducted. Consequently, 6.0 million additional inquiries would be required at the State level under Option A.

Finally, as a result of the proposed expansion of the AIS-III index, the FBI's Identification Division would also need to respond to requests for records on the 8.8 million individuals who were born in or after 1929 but arrested for the first time before July 1, 1974. Expansion of this index would necessitate the assembly, retrieval, and mailing of an estimated 4,000 manual files daily (including 3,000 files to meet anticipated criminal justice requests plus 1,000 files for firearm applicants).

Identifying convicted felons. In many, perhaps most, cases the actual criminal history record of an applicant would be examined only when a fingerprint card is submitted. For an estimated 80-90% of all prospective purchasers, a check would only be made for the existence of a criminal record. For the applicants who were identified by a name and date-of-birth search and who subsequently submitted fingerprints, a more complete assessment of the record would be required.

The difficulty of accurately identifying a convicted felon varies from State to State. In some States felony identification is automated: a felony conviction flag exists in the record. In other States felony identification is obtained from the State statutory code listed for each conviction offense. Interpretation of this code is typically achieved manually, unless a computer program exists to automatically classify statutory codes as either felony or non-felony offenses. In other States felony identification is only sometimes possible. In these States a felony may be determined when a conviction is unambiguously a felony (such as murder or rape) or when a free text field exists and the word felony appears in the field.

The issue is further complicated by the fact that the State definition of a felony may not correspond with the definition in the Gun Control Act (an act punishable by imprisonment for more than 1 year.)

The task of accurately interpreting criminal history records is even more difficult when an applicant has been arrested in States other than the current State of residence. FBI records do not contain sufficient information to identify felons or those convicted of crimes punishable by imprisonment for more than 1 year. FBI offense codes are typically recorded as literals (free text) or as numeric NCIC codes. State statutes and text containing the word "felony" are only infrequently reported.

Faced with these difficulties, States currently conducting criminal history searches on gun applicants employ three strategies: (1) Infer a felony conviction based on sentencing data (e.g., if the record contains a sentence to incarceration of greater than 1 year, the applicant is identified as a felon); (2) obtain more detailed out-of-State records via NCIC or NLETS, which may designate conviction offenses as felonies; and (3) infer a felony conviction from a literal description.

Response times. The initial telephone check would be immediate, within minutes, assuming sufficient resources. Electronic searches of State and Federal master name indexes could be conducted while the gun dealer remained on the line. Among the 20 State identification bureaus surveyed for the Task Force by Fisher-Orsagh Associates, the average in-house response time for a non-fingerprint search utilizing a terminal is about 20 seconds (A Survey Of Twenty State Criminal History Repositories, Fisher-Orsagh Associates, June 1989). Additional minutes would be needed if the State agency attempted to reduce the number of false hits by requesting additional information from the gun dealer. An additional 30 seconds would be required for an NCIC check of the AIS-III index.

The secondary verification procedure would require approximately 4-6 weeks to complete. Existing searches based on fingerprint cards at the FBI's Identification Division are processed within 14 working days. An estimated 7 days would also be required for submission of fingerprint cards via the mail and return of FBI rap sheets to the State agency. Some additional time would be necessary for evaluating criminal history records by the designated State agency, including, if necessary, calls to courts or prosecutors' offices.

The response time for secondary verification may be reduced once current automation procedures at the FBI are fully in place. The FBI anticipates that response times will be reduced to somewhere between 2 and 10 days, depending on a proposed expansion of their computer system.

Estimates for fingerprint searches conducted by State criminal history repositories, which would be simultaneous with the FBI checks, indicate a total response time for a criminal justice inquiry of 3 to 23 working days, including mail turnaround time. In the 20 States examined by Fisher-Orsagh Associates, the average response time for a fingerprint search was 5 days, assuming the search was for a criminal justice purpose. For non-criminal-justice searches the average increased to a total of 9 days. No significant reduction in this response time is expected in the near future.

Costs. Of all options, the telephone check with a secondary verification may be the least expensive to implement and operate. Costs are kept down by using existing technologies, telecommunication systems, and data sources. Costs are further reduced by limiting fingerprint checks only to those individuals appearing on the master name indexes and by creating a State-level data base of Certificates to Purchase and Notices of Denial.

For the telephone checks only, the total estimated cost at the State and local level includes a start-up cost of \$14.3-\$17.7 million and an additional annual operating cost of \$30.0-\$39.4 million. The estimated cost of the secondary verification would include a start-up cost of \$8.6 million and an annual operating cost of \$10.4-\$13.3 million. The combined cost for the telephone checks and secondary verification at the State and local level would be between \$22.8 and \$26.2 million in start-up costs and between \$40.3 and \$52.6 million in annual operating costs. (For more detailed cost figures, see Exhibit 6 and Estimates of Start-up And Operational Costs Of Systems For Identifying Felons Who Attempt To Purchase Firearms, Fisher-Orsagh Associates, June 1989.)

At the Federal level the combined cost for the telephone check and secondary verification is estimated at \$12.7-\$17.8 million a year. The start-up cost is estimated at \$13.1-\$17.3 million.

When local, State, and Federal costs are added together, the total estimated annual operating cost for Option A ranges from \$53 million to \$70 million and the total estimated start-up cost ranges from \$36 million to \$44 million. Note that if existing criminal history

checks for gun purchasers are taken into account, the actual new cost may be somewhat lower than these estimates—perhaps 11-13% lower for operational and start-up costs. On the other hand, these estimates do not include any costs to dealers for new phone lines or staff or to local police for their part in the secondary verification.

A substantial portion of the operating costs could be transferred to the individual applicant through fees for all gun purchases, whether or not a fingerprint search is performed. Given the total annual cost estimates, a fee of \$7.07-\$9.39 per applicant per purchase would be required to cover local, State, and Federal costs.

Impact. 1. Purchasers: The vast majority of individuals without criminal records would have the immediate ability to purchase a firearm. Except for individuals falsely rejected by the search of the master name indexes, those without criminal records would not be burdened by pre-approval procedures.

2. Dealers: In addition to current application procedures, dealers would be required to make a telephone call prior to every purchase and to create and maintain a log of all inquiries. The time necessary to make the checks is expected to average about 3 minutes per sale. An additional telephone line may be required for some dealers. Among high-volume dealers, additional staff may be required to handle multiple checks simultaneously without generating long waiting lines at the gun shop.

3. Local law enforcement: Local law enforcement agencies would process an estimated 725,000 applications and fingerprint cards a year as a result of the secondary verification procedures. This work load may require some additional staff and funds for agencies currently working at peak levels.

4. State law enforcement: The State identification agency or other designated agency for applicant checks would experience a large increase in its work load. To process the estimated 7.5 million telephone inquiries, States would need new communications lines, staff to respond to inquiries, additional office space, computer terminals to access the State master name indexes, and software to build the inquiry data base. State identification bureaus would also require a 7-day work week with longer hours (or 6 days if gun sales were prohibited on Sundays).

To process the estimated 10% increase in fingerprint cards, States would require funds, staff, space, and software to maintain a data base on the

Certificates to Purchase. (See *A Survey Of Twenty State Criminal History Repositories*, Fisher-Orsagh Associates, June 1989, for the ability of specific States to handle a 10% increase in in-house searches of their criminal history files.) States may also be required to establish an administrative appeals procedure for challenging adverse decisions.

5. NCIC and FBI Identification Division: The NCIC communications system would experience a minor increase in volume—an increase of 5% on a peak day during hunting season. To process this increase in volume, 16 additional lines plus an enhancement to the front-end capacity on the NCIC computers will be required. The number of additional inquiries into the AIS-III computer, however, would increase by approximately 70%. To handle this increase, the AIS-III computer must be significantly enhanced. The telephone search would also require additional staff at the FBI's Identification Division to process requests for the 8.8 million manual records of offenders arrested for the first time before July 1, 1974, and born in or after 1929. The manual records would be requested through NCIC for all criminal justice purposes and mailed to the requesting agency by the FBI Identification Division.

Based on the estimated 725,000 fingerprint cards submitted annually and the 4,000 daily requests for manual files through NCIC, approximately 395 additional employees may be needed by the Identification Division as a result of Option A. An estimated 126 of these employees would be technical (e.g., fingerprint technicians, classifiers, and verifiers) and 212 would be typists; all of these would require 3-6 months of training. The FBI would require 12-18 months to recruit and clear these 395 new employees. These new employees would require nearly 8,000 square feet of additional office space.

Impact of AFIS technology on secondary verification. At the present time the FBI and more than half of the States either have an automated fingerprint identification system (AFIS) or are in the process of procuring such a system. These systems, as currently utilized, require technicians to classify the prints according to pattern type; the prints are then scanned, digitized, and matched against prints from an AFIS data base. (Note that new AFIS equipment has recently been introduced that automates the classification process, but this is not yet a proven technology.) At the end of the matching process, a list of all potential identification candidates is produced,

and a technician visually compares the print to the corresponding list and makes the identification decision. (See "Appendix" to *Legal And Policy Issues Relating To Biometric Identification Technologies*, SEARCH Group, Inc., June 1989.)

Despite the automation of the search process, further implementation of AFIS technologies will have little impact in the near future on the estimated response times and costs of processing the additional fingerprint cards generated by the secondary verification procedure. The AFIS matching process is time consuming and both labor and machine intensive.

Advantages. 1. Access to criminal history records would be limited to law enforcement agencies, except that gun dealers would receive notice of approval or denial.

2. With the exception of the addition of 8.8 million records to the AIS-III index, the system would utilize existing State and Federal criminal history data bases. The additional inquiry data base and Certificate data base would be easily established and maintained at a low cost.

3. Access through NCIC to the 8.8 million manual records maintained by the FBI's Identification Division would have added benefit to law enforcement. Currently, checks are limited to younger offenders and those first arrested after 1974. Addition of these records would enhance the level of service that the FBI could provide to law enforcement agencies nationwide.

4. Compared to other options, the initial telephone check would reduce the burden on State and Federal identification systems. Only an estimated 10-14% of all purchases would require a fingerprint search.

5. No list of applicants or purchasers would be created. Only those individuals issued a Certificate to Purchase or Notice of Denial could be identified in a data base. The identity of individuals holding certificates would be regularly expunged from the data set within a year of the date of issuance.

6. Purchases of firearms by applicants outside their State of residence would be permitted. Normal telephone checks and secondary verification procedures could be followed.

Disadvantages. 1. The validity of the telephone check is only as reliable as the purchaser's identification documents. It does not provide unique identification as do the more expensive fingerprint or other biometric systems. Consequently, prohibited individuals intent on obtaining a firearm with false

identification documents would be able to pass the telephone check.

2. A major burden would be placed on the State agency accessing the repository data and on local law enforcement agencies that issue the fingerprint cards. The extent of the burden would depend on the volume of requests and degree of record automation. Further automation of State master name indexes and criminal history files would be encouraged.

3. The system would not be immediate for individuals rejected by the search of the master name indexes. In addition, some individuals may be falsely identified because their name and date of birth match those of another individual. Extensive false hits could generate considerable adverse reaction.

4. Rejection of prospective buyers as a result of telephone checks may be perceived by gun dealers as a cause for lost revenue. Buyers who ultimately qualify for purchase may not always return to the original dealer and make the purchase.

5. Occasionally the State or NCIC computer systems may not be operating at the time of purchase, resulting in delays and possibly loss of revenue to the gun dealer.

Potential modifications. 1. The secondary verification procedure could be modified so that applicants would only be required to appear at a law enforcement agency to be fingerprinted if the State repository was unable to make a positive determination of eligibility after receiving all automated criminal history records. If the State repository could not determine an applicant's identity or resolve questions of eligibility, the applicant would then be fingerprinted at a local law enforcement agency, and the fingerprint cards would be submitted to the State identification bureau and the FBI for evaluation.

This modification could reduce the burden on applicants eligible to purchase firearms. Applicants with prior arrests but qualified to purchase firearms (e.g., those not convicted of any offense, those convicted only of crimes not meeting the Federal definition of a felony, or those pardoned) would not automatically be fingerprinted or required to wait the projected 4-6 weeks for a complete fingerprint check and evaluation of records.

This modification would also reduce the volume of additional fingerprint cards submitted to the State identification bureaus and the FBI.

2. A fingerprint could be placed on the BATF application (form 4473). Once given approval for purchase, the gun

dealer would roll a print of the applicant's right index finger, for example. Although this print would not be submitted to the State identification bureau, it could greatly enhance BATF's ability to prosecute applicants who provide false information. In addition, requiring an applicant to provide a fingerprint on the application form may serve as a deterrent to those who possess fraudulent identification cards but who are reluctant to submit fingerprints.

3. An applicant data base could be created and maintained by the State identification bureau. This data base would be queried first when a purchaser check was conducted. It would contain basic information on individual applicants who had been previously approved through a point-of-sale name check or a secondary verification procedure. The data base would include an applicant's name, date of birth, race, sex, and a flag indicating approval for purchase. The data base could be updated continuously for subsequent disqualifying convictions. Once individuals received approval, no additional searches of their criminal history files would be conducted for subsequent purchases. This option could eliminate the need for a Certificate to Purchase.

If States constructed this data base, the number of name searches and print searches could be significantly reduced. Fears that such a data base would create a list of gun purchasers could be allayed by requiring States to systematically purge records after a 2 or 3 year period. Moreover, such a data base could be limited to those who failed the telephone check and then passed the secondary verification; thus, only a small portion of all gun purchasers would be included.

4. Point-of-sale approval requirements could be relaxed for certain types of dealers. Low-volume dealers and those selling at gun shows could be exempted from the telephone checks. However, to regulate purchases of firearms from these dealers, State law enforcement agencies could be required to perform random criminal history checks on those who have purchased firearms from these low-volume dealers.

5. Fingerprint searches in the secondary verification process could be limited to the repository within the applicant's State of residence. Federal data bases would be searched only on name, date of birth, race, and sex. Applicants found to have out-of-State rap sheets would be required to appeal to the State repositories maintaining the disqualifying records. This modification would have two good effects: (a) a

reduction of response time for secondary verification, and (b) no need to evaluate out-of-State records. However, a major disadvantage is that once a hit is made through NCIC, the burden of certifying qualification to purchase would be shifted to the applicant.

6. To increase reliability, applicants for specific types of guns could be required to be fingerprinted and would not be eligible for a telephone check.

7. To ensure that excess delay in making an eligibility decision did not unduly interfere with the rights of qualified purchasers, the system could include firm deadlines for governmental action at various stages. Failure to meet a deadline would allow the sale to proceed. Ineligible purchasers would still be subject to subsequent prosecution.

(2) *Option A1: Terminal access by gun dealer to disqualifying information.* This option is a variant of Option A, described above, but instead of the gun dealer calling a law enforcement agency, which would access criminal history records electronically, the dealer would directly access an intermediary computer that would review the indexes and transmit "accept" or "reject" notices to the dealer. The system would work as follows:

1. The applicant would present the same identification documents to the dealer as required under Option A.

2. The dealer would use a terminal in the shop to access an intermediary computer that would review criminal history indexes and transmit authorization or denial notices to the gun dealer's terminal. (Special passwords would be required to prevent unauthorized access. Transaction logs would be maintained by the State or NCIC to monitor inquiries.)

3. If the notice was to "accept," the sale could be completed immediately. If the notice was to "reject" (indicating the existence of a printable offense), the applicant would be directed to a local police department to initiate the secondary verification process.

4. Subsequent procedures follow Option A.

Advantages and disadvantages. All advantages and disadvantages noted in Option A apply to this option except as follows:

1. The costs for installation of a terminal in each dealership would be substantial. Training would also be required in the use and maintenance of the terminals. Procedures for passwords and logs would also be required.

2. Access through an intermediary computer would require a new computer capability at the Federal level and in

each of the 50 States. Such a capability could be costly.

3. There would be no noticeable reduction in response times, since telephone checks under Option A would also be completed on a real-time basis.

Estimated cost. See discussion under Option A2.

(3) *Option A2: Touch-tone telephone access by gun dealer to disqualifying information.* This option is the same as Option A1 above, but substitutes a touch-tone telephone for terminal access. The system would work as follows:

1. The applicant would provide identification to the dealer as required under Option A.

2. Using a touch-tone telephone and a toll-free number, the dealer would access an intermediary computer, as in Option A1, and would enter his license number to prove eligibility. The communications system would establish a log of the transaction. The dealer would then enter the applicant's digitized name and other identifiers.

3. The message would be received by the State repository or NCIC and checked against a master name index.

4. The dealer would be advised of the "accept" or "reject" status only.

5. If rejected, the applicant would be advised to seek secondary verification through a local police department. Subsequent procedures would follow Option A.

Advantages and disadvantages. The advantages and disadvantages would also be similar to those for Options A and A1; however, the costs may be lower than Option A1 since terminals would not have to be installed at all dealers.

Estimated cost. Although Options A1 and A2 do not present any particular operational advantages over the simpler Option A, they would be more complicated and costly to set up. Thus, in the short term they do not have any benefits over Option A. Nonetheless, it is possible that by directly and electronically connecting gun dealers to disqualifying information, Options A1 and A2, or others like them, would prove less expensive in the long run than Option A with its need for numerous new personnel in the State repositories to field the calls from gun dealers.

(4) *Option A3: Live scan of fingerprints by gun dealer.* This option differs from other variants of Option A in that fingerprints would be taken directly at the point of sale and digitized for transmission to the record repository. Records would be scanned on the basis of fingerprints. The system would work as follows:

1. The applicant would place his hands into a fingerprint scanner, which would be maintained and operated by the dealer.

2. Digitized fingerprint data on all 10 fingers would be transmitted to the State repository.

3. At the State repository, a fingerprint technician would calculate the pattern types of the 10 fingers and then select a subfile of the data base for a subsequent automated search. Fingerprints would be checked against a criminal history data base, a fingerprint index, or a specially created data base of disqualified persons.

4. If the search resulted in a list of potential candidates, a fingerprint technician would examine the candidate prints and make a determination of identification.

5. Based on the search, an "accept" or "reject" message would be sent to the gun shop. Fingerprints of accepted applicants would not be retained by the State identification bureau.

6. If a rejection was based on a check against a fingerprint index only, the applicant would be advised to initiate secondary verification. If a rejection was based on a full record check or check against a special disqualification data base, the denial would be final, but the applicant would be advised of appeal procedures.

Additional characteristics. 1. Dealers would be required to install 10-finger scanning equipment including a capability to transmit the scan data to the State repository and the ability to receive "accept" or "reject" messages from the repository.

2. States would need: (a) The capability of receiving the 10-finger scan data, (b) fingerprint technicians to determine pattern types and subfiles to be searched, (c) the ability to search files based on pattern type and digitized minutiae, (d) the ability to compare applicant prints to candidate file-prints and determine identification, and (e) the ability to transmit results to the dealer.

3. In order to check for out-of-State arrests, the system would require the FBI to set up a mechanism for receiving digitized fingerprint data from State repositories, which currently use several incompatible AFIS systems.

4. Response times would include an estimated 6 minutes to scan 10 fingers at the shop, 1-6 minutes for a technician to classify the prints, and 1 minute to verify a match from the search file. An additional 5-15 minutes would likely be required to search the fingerprint file (depending on the search procedures, the size of the data base, and the availability of computer equipment).

This is an estimated total of 13-28 minutes.

Advantages and disadvantages. 1. Use of fingerprints ensures accuracy of identification at the gun shop. In a properly functioning system, no one who had previously been fingerprinted for a crime would escape detection.

2. There would be a substantial reduction in the number of secondary verifications, perhaps as much as 50-80% over Option A.

3. A major disadvantage is the extremely high cost of developing, installing, and maintaining on-site equipment and transmission lines. Training for dealers would also be required to obtain properly scanned fingerprints. High-volume dealers would require multiple scanners and additional staff.

4. Indexes to Federal and State criminal history files would have to be upgraded and made compatible with fingerprint data transmitted from the on-site scanners. At a minimum, indexes to current criminal history files would require upgrading.

5. Response times (13-28 minutes) would be longer than the telephone check of the basic Option A.

Estimated cost. Because of the novel and complicated nature of this option and its use of technologies still under development, it has been possible to estimate only part of the costs of setting up such a system. Consequently, the following estimates should be viewed as only a rough measure of system costs.

For a system involving live fingerprint scan at all dealers, total start-up costs are estimated at \$9.6-27.1 billion and annual operating costs (assuming equipment depreciation and maintenance) at \$3.0-8.3 billion. For a system restricting live scan to commercial dealers (an estimated 35% of all dealers), total start-up costs would be an estimated \$3.5-9.6 billion and annual operating costs would be \$1.2-3.1 billion.

(5) Option A4: Biometric identification card. This option is not so much an alternative to the basic Option A as a distinct feature that could be added to it. The system requires that the applicant obtain a State-issued identification card that incorporates biometric information, name, date of birth, and other standard identifiers. This card could be a general-purpose card, such as a driver's license, or a special-purpose card for gun purchases. The biometric information could be an actual fingerprint on the card, or it could be a digitized representation of biometric information magnetically encoded on the card. This option also requires that dealers have equipment able to read the applicant's

fingerprints, or other biometric information, and compare them against characteristics on the card. The system would work as follows:

1. The applicant would obtain a card from the State with biometric identifiers.

2. The applicant would present the card to the dealer. The dealer would then use equipment to compare the biometric data from the applicant with the information on the card.

3. If there was a match, the dealer would proceed with an inquiry to the State repository either (a) by telephone, as in Option A, or (b) if the card was in a digitized format, through a device that could communicate with an external database over telephone lines (as is used in approving credit card purchases).

4. The remaining procedures follow Option A.

Advantages and disadvantages. 1. The use of biometric information on the ID card and the subsequent biometric check at the gun shop would enhance the reliability of the identification check by making it substantially more difficult for such an identification document to be counterfeited or altered. However, other technologies also exist, such as holograms, to enhance the security of identification documents. Moreover, the biometric card does not solve the problem of individuals using fraudulent "breeder" documents, such as birth certificates, to obtain the biometric ID card.

2. Prior recording of biometric identification data on the card eliminates the need for transmission of biometric data from the dealer to the central facility.

3. On-site equipment to check biometric data at the point of sale would be expensive to install, maintain, and operate. Dealers would have to be trained.

4. Interstate coordination, perhaps requiring the collection and maintenance of fingerprints for all applicants, would be necessary to prevent applicants from obtaining separate ID cards in different States using different names. This would be important since subsequent inquiries to State or NCIC data bases would be based on name rather than fingerprints.

5. Biometrically-supported identification could be used to link the dealer with data bases of other ineligible firearm purchasers, such as those dishonorably discharged from the Armed Forces.

6. Regulations would have to be issued to govern action by dealers if applicants were discovered to be using false identification (for example, where

an applicant's fingerprints did not match data on the card).

Estimated cost. The following cost estimates do not include any costs associated with producing and distributing a biometric identification card.

For a system involving a biometric check at all dealers, total start-up costs are estimated at \$198-368 million and annual operating costs at \$102-168 million. For a system restricting the biometric check to commercial dealers (an estimated 35% of all dealers), total start-up costs would be an estimated \$93-158 million and annual operating costs would be \$70-105 million.

II. C. Section 3. Prior approval systems

(1) Option B: Firearm Owner's Identification (FOID) Card. Each State would develop a system for issuing a Firearms Owner's Identification (FOID) Card, which would be required for purchasing any firearm and would be valid for up to 3 years from the date of issue. This system, which would be quite similar to the secondary verification of Option A, would have the following requirements:

System description (Exhibit 3). 1. Prior to purchase of a firearm, each applicant would be required to appear at a law enforcement agency within the jurisdiction of the applicant's legal residence.

2. Each applicant would be fingerprinted and photographed, and the fingerprint cards and photograph would be submitted to the State criminal history repository and to the FBI's Identification Division for a fingerprint check.

3. Results from the FBI fingerprint check would be returned to the designated State agency for evaluation.

4. Additional records could be obtained directly from other State repositories or from courts or prosecutors' offices, as described in the discussion of the secondary verification procedures of Option A.

5. State officials would evaluate the records from all sources to determine whether the applicant was eligible to purchase a firearm. The designated State agency would issue a FOID card or Notice of Denial. The State agency would maintain a data base on all FOID cards.

6. If a Notice of Denial was issued, the applicant would be informed of the right to appeal.

7. The State agency would periodically issue to all gun dealers a listing of all invalid FOID cards.

8. If the applicant possessed a FOID card and wished to purchase a firearm, the gun dealer would be required to

verify, prior to sale, the identity of the purchaser and the validity of the card. The applicant would fill out an application for purchase, which would require an additional piece of identification. The gun dealer would check the listing of invalid FOID cards.

9. If the sale was denied, the gun dealer would instruct the applicant on the procedures for an appeal. The gun dealer would send a copy of the application to the appeals agency.

Data sources. Fingerprint searches would utilize all existing criminal history data bases at the State and Federal levels. Manual as well as automated files would be searched. Approval of an application for a FOID card would not require an immediate search for out-of-State records; consequently, the AIS-III index would not have to be modified (as in Option A). Searches of records on individuals who were arrested before 1974 would utilize the current procedures of the FBI's Identification Division.

A FOID card data base would be maintained by the State identification bureau or designated State agency. This data base would contain basic information on applicants who had previously received a card. It would contain the applicant's name, date of birth, race, sex, other identifying information, and the FOID card number and expiration date. The data base could be regularly updated by the State identification bureau for subsequent disqualifying convictions. The State agency would issue on a regular basis lists of invalid FOID cards. Unless the applicant elected to renew the FOID card, the data base would be purged of all applicant information after the expiration date.

Verification and controls. Gun dealers would be required to maintain copies of all applications and the purchaser's FOID card number. Gun dealers would be subject to State or Federal audits. Dealers would be subject to criminal penalties for false records of sale and to loss of license for incomplete records.

Access to criminal history records would be restricted to law enforcement agencies.

If a card holder became prohibited from purchasing firearms after the FOID card had been issued, a Letter of Revocation would be sent by the State agency to the individual. The State agency would be required to send all gun dealers a listing of invalid FOID cards. No attempt would be made to recall invalid cards or firearms.

Positive identification. Positive identification of applicants by gun dealers could be enhanced by placing the applicant's picture and fingerprint on

the FOID card. Requiring the applicant to provide at least one additional document with a picture identification would provide further confirmation of identity by the gun dealer.

Security provisions could be introduced to the FOID card, which would increase the difficulty and costs of counterfeiting. States could also be encouraged to develop better procedures for issuing breeder documents and securing existing cards (such as driver's licenses) from counterfeiting.

An applicant's fingerprint could also be placed on the BATF application (form 4473, Exhibit 5) at the time of purchase. This requirement would not only enhance BATF's ability to prosecute applicants who provide false information but also serve as a deterrent to individuals with false documents who may be reluctant to provide a fingerprint.

Out-of-State sales. The sales of firearms to out-of-State residents either at a gun shop or through the mail is currently restricted by Federal law to long guns (e.g., rifles and shotguns). With few exceptions, interstate sales of handguns are prohibited. Under Option B applicants possessing a FOID card issued in one State would be permitted to purchase a long gun in another State; however, applicants could only obtain FOID cards in their State of residence.

Two procedures may be adopted to check qualifications of out-of-State purchasers: (a) Dealers may be required to call a national toll-free number for a name and date-of-birth check; or (b) out-of-State residents may be required to obtain a Certificate to Purchase from a local law enforcement agency.

The first procedure would require the non-resident applicant to fill out the BATF application and present the out-of-State FOID card plus another photo-identification card to the dealer. The dealer would be required to call a national center, which would conduct a name and date-of-birth search of State and Federal files through NCIC. The dealer would receive a message of acceptance or denial. If the sale was denied, the applicant would be advised of the right to appeal; however, all appeals would be conducted within the applicant's State of residence.

The second procedure for sales to nonresidents would require that these applicants obtain a Certificate to Purchase from a local law enforcement agency within the State of purchase. Prior to purchase of a long gun, the applicant would submit the out-of-State FOID card and other identification documents to a local law enforcement agency; a name and date-of-birth check

of NCIC files would be conducted; if the applicant had no prior disqualifying record, the applicant would be issued a Certificate to Purchase. The certificate would be valid for 1 month.

Identifying felons. The problems of interpreting criminal history records are the same as those discussed in Option A. Accurate interpretation of in-State, out-of-State, and Federal records, though difficult, could be achieved given sufficient resources and time.

Response times. The fingerprint search procedures (including mail handling) and evaluation of records would require under current practice an estimated 4-6 weeks. (See Option A for details on how response times are estimated for the equivalent secondary verification procedure.)

Some reduction in the average response time could be achieved if State fingerprint searches produced evidence of disqualifying convictions or yielded an FBI number before the results of the FBI fingerprint check were received. In the former case the applicant would be disqualified on the basis of the State records alone; in the latter case the FBI number could be used to do an immediate query of Federal and out-of-State records through NCIC.

Expected number of cards issued annually. The proposed FOID card would be required of all purchasers of firearms. Unlike the current system in Illinois (see Part IV, Section 2), FOID cards would not be required of current owners or those wishing to buy ammunition. Start-up of the proposed FOID card system would begin with new buyers only.

Data on FOID card applications in the State of Illinois provide some basis for estimating the number of cards to be issued nationwide under Option B. Nearly 200,000 FOID cards are issued annually in Illinois. Relative to the resident population age 18 or older in Illinois (8.5 million), this figure represents a rate of 2.4 cards per 100 adult residents. If this rate were applied to all adult residents in the United States, the expected number of cards issued annually would exceed 4.2 million in 1990. A FOID card valid for only 3 years, instead of 5 years in Illinois, would generate a larger estimate—nearly 6 million cards issued yearly.

Because the proposed FOID card system for the Nation is restricted to firearm purchases only (and excludes requirements for possession of a firearm or purchase of ammunition), the annual number of cards issued should be somewhat less than the 6 million, based on projections from the Illinois system. However, based on figures from Option

A, an estimated 6 million individuals buy the 7.5 million firearms sold annually. Consequently, in the first year of start-up, the estimated number of FOID cards issued cannot be less than 6 million. Once the system has been implemented, the number of cards issued annually should diminish. Though no data exist on the number of repeat buyers from year to year, if we estimate that about a sixth of buyers in any one year purchased a firearm in the previous year, then the estimated number of cards issued annually should approach 5 million in the long run.

Current practices of the District of Columbia and the 22 States that conduct a pre- or post-purchase criminal history check would reduce the net impact of Option B by approximately 8%. As a result, the total projected increase in fingerprint cards at the State and Federal levels would be approximately 5.5 million in the first year and 4.6 million in subsequent years.

The resultant number of fingerprint checks at the FBI would represent more than a doubling of civil (applicant) fingerprint cards (from the current figure of 4 million cards). Overall, the FOID card procedure would increase the total number of fingerprint cards submitted to the FBI's Identification Division from 8.4 million to 13.0 million—an increase of approximately 55%.

Impact. 1. Purchasers: Individuals without criminal records would not have the immediate ability to purchase a firearm. Those without criminal records would be required to have fingerprints taken by a law enforcement agency and be required to wait an estimated 4-6 weeks to obtain a FOID card. Once a purchaser possessed a card, there would be no additional waiting period during the time the card was valid.

2. Dealers: Little additional burden would be placed on gun dealers. Gun dealers would not be required to place any calls to law enforcement agencies for clearance prior to a sale. Dealers would be required to enter the FOID card number on each application form and review the lists of invalid FOID cards prior to each sale. Dealers would not perceive a loss of sales as a result of buyers being rejected in the shop at time of sale.

3. State law enforcement: States would experience a substantial increase in work load. Local law enforcement agencies would process additional paperwork and fingerprint cards. In the long run, the number of fingerprint cards would increase on average by 55% in each of the State identification bureaus. States would also need to establish an administrative staff to coordinate processing of appeals, to conduct system

audits, and to coordinate audits of gun dealers.

4. FBI Identification Division: The FBI's work load would dramatically increase. Based on the long-term projection of 5 million fingerprint cards submitted annually, as many as 1,700 additional employees may be needed by the Identification Division.

Approximately 550 of these employees would hold technical positions (e.g., fingerprint technicians, classifiers, and verifiers) and 520 would be typists; all of these would require an estimated 3-6 months of training. The FBI would need several years to recruit and clear these 1,700 new employees, assuming this is even possible. Moreover, it would require an additional 31,000 square feet of office space.

Costs. The annual operating cost at the State and local level is estimated to be between \$71 million and \$91 million. (For detailed cost estimates, see Exhibit 6 and Estimates of Start-up and Operational Costs of Systems for Identifying Felons Who Attempt to Purchase Firearms, Fisher-Orsagh Associates, June 1989.) State and local law enforcement agencies would also require an estimated \$72 million for start-up costs.

At the Federal level the estimated cost for processing the anticipated 5 million fingerprint cards a year is \$65-70 million, and the cost for start-up is \$77-81 million.

Overall, when local, State, and Federal costs are combined, the estimated annual operating cost for Option B is \$136-161 million, and the estimated start-up cost is \$148-153 million.

If the annual operating costs were transferred to applicants through user fees, a fee of \$27.28-32.39 per FOID card application would be required to cover local, State, and Federal costs.

Note that if current fingerprint checks for gun purchasers are taken into account, the actual new costs may be slightly lower than these estimates—perhaps 5% lower for start-up costs and 8% lower for annual operating costs.

Advantages. 1. The system would utilize existing data sources, communications systems, and search procedures.

2. Access to criminal history records would be limited to law enforcement agencies. Gun dealers would receive only a listing of invalid card numbers.

3. Positive identification for those with a criminal history record could be established at the time of application for the FOID card. Unlike Option A, an estimated 6-8% of the individual applicants would not be falsely rejected

because they had a name and date of birth similar to that of someone with a criminal history record.

4. Use of the FOID card would make purchase of firearms more convenient by eliminating point-of-sale criminal history checks. Only one criminal history check would be required in a 3-year period regardless of the number of firearms purchased.

5. This system would be much less burdensome to the gun dealer than the point-of-sale options.

Disadvantages. 1. Individuals without criminal records would not have the immediate ability to purchase a firearm and would be required to have fingerprints taken by a law enforcement agency. The processing of applications for FOID cards could take approximately 4-6 weeks. There may also be public resistance to systematic fingerprinting of all firearm purchasers.

2. Fingerprint searches are slow and costly and place heavy demands on State and Federal repositories, which are having difficulties with current work loads.

3. A State FOID card system would create a list of all persons with valid cards. Though essential to verification and prevention of forgery and fraud, the creation of such a list may be controversial.

Potential modifications. 1. Fingerprint searches may be limited to the repository within the applicant's State of residence. Federal data bases would be searched only on name, date of birth, race, and sex. In order to accomplish this, the AIS-III index would have to be expanded to include individuals arrested before 1974. State repositories would assemble Federal and out-of-State records from automated and manual FBI files plus additional records obtained from NCIC. This modification would substantially reduce the FBI's burden in conducting fingerprint checks while increasing its burden in providing manual records in response to NCIC inquiries. The net effect could be a reduction in burden to the FBI. This modification in Option B would also potentially reduce response times and system costs. A major disadvantage would be decreased reliability in searches of Federal and out-of-State records since name searches of automated records are less reliable than fingerprint-based searches.

2. A notarized statement of eligibility from an applicant could be substituted for fingerprint checks (similar to procedures in Illinois). Fingerprint checks would not be performed. Verification and control procedures could be introduced through random criminal history checks conducted by

State identification bureaus. Criminal sanctions could be imposed on individuals who falsify information on the application form. State repositories and Federal officials would be given authority to conduct audits, to revoke FOID cards, and to impose criminal sanctions on fraudulent applicants.

Major advantages of this modification would include: (a) The burdens on State and Federal repositories would be reduced; (b) the burden on applicants would be limited to obtaining a notarized statement; and (c) response time from application to issuance of card could be reduced from the 4-6 weeks in Option B. The major disadvantage would be an increased potential for fraud by disqualified applicants.

3. Fingerprints could be required only for the initial issuance of the FOID card. Renewals could be based on a name and date-of-birth search only. As a result of this modification, the annual number of fingerprint searches could be reduced by about a third.

4. The FBI Identification Division could build a "stop file." Applicant print cards could be added to the existing criminal files or to a special FOID card file. State identification bureaus could then be notified by the FBI when a FOID card holder was subsequently convicted of a disqualifying offense. As a result of this modification, FOID cards would not have to be restricted to a 3-year term; consequently, the number of fingerprint cards sent to the State and the FBI would be reduced. Major disadvantages of this procedure would include: (a) A substantial increase in the number of non-criminal fingerprint cards retained by the FBI, and (b) increased fears that such a data base would create a Federal list of gun owners and that it could be used for other criminal justice or investigative purposes.

5. The proposed system could be modified so that FOID cards would be required only of purchasers of specific types of guns.

(2) Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer. This option is a variant of the pre-approval system described in Option B. In this variation gun buyers would be fingerprinted by local law enforcement; State and Federal criminal history files would be checked by the local law enforcement agency; individuals would be notified of the results while at the law enforcement agency; if approved, individuals would be issued a FOID card; if rejected, individuals would be advised of appeal procedures. The system would work as follows:

1. The applicant would go to a designated law enforcement agency to obtain a FOID card.

2. The applicant would place all 10 fingers into a fingerprint scanner, which would be maintained and operated by the local law enforcement agency.

3. Digitized fingerprint data would be transmitted to the State identification bureau (and to the FBI if the applicant was not disqualified by the State).

4. At the State identification bureau, a fingerprint technician would calculate the pattern type, which would identify the subfile of the State fingerprint data base. The subfile would then be searched for potential matches.

5. If the search resulted in a list of potential matches, a fingerprint technician would examine the prints and determine identity.

6. If a match was found, a technician at the State identification bureau would inspect the criminal record for disqualifying convictions. If the applicant was disqualified, the local law enforcement agency would be immediately notified and the applicant would receive a Notice of Denial.

7. If a match was not found in the State files (or if the applicant had no disqualifying convictions), the digitized fingerprints, pattern types, and other identifying information would be transmitted by the State identification bureau to the FBI. The FBI would subsequently conduct an electronic search of the national fingerprint files, master name index, and criminal history files.

8. If a match was found in the FBI files, the State identification bureau would receive (by NLETS) copies of the automated records and (by mail) copies of the manual records. If automated, the State would evaluate the records and transmit results to local law enforcement. If manual, the State would notify the law enforcement agency that a record was found and that the applicant could return within 7 work days to receive a FOID card or Notice of Denial.

9. If an applicant was issued a FOID card, the State identification bureau would retain a copy of the applicant's fingerprints. A print of either the thumb or index finger would be on the FOID card.

10. At the gun shop, purchasers would present the card to the dealer. The dealer would then use equipment to scan the applicant's fingerprint (one print). The equipment would compare the applicant's print to the print on the FOID card.

11. The dealer would call the State identification bureau. The FOID card

data base would be examined to determine whether the person in the gun shop was the same person who applied for the card, whether the card had been reported lost or stolen, or had expired, or whether the person had been subsequently convicted of a felony.

12. The dealer would receive notice of approval or denial of sale from the State identification bureau. As a result of a denial, applicants would be advised of appeal procedures.

Advantages and disadvantages. 1. *Advantages include:* (a) Shorter response time to obtain a permit—a majority of applicants could, within an hour, receive a valid FOID card from local law enforcement; (b) the ability to increase the reliability of identification at the gun shop; (c) the ability to identify FOID cards as lost, stolen, lapsed, or disqualified; and (d) the enhancement of automated fingerprint processing for all law enforcement purposes.

2. *Disadvantages include:* (a) The high costs of start-up and operations; (b) the requirement for equipment and software that are currently being tested or yet to be developed; (c) the need for modifying existing State and Federal data bases to interface with digitized fingerprint information; (d) additional automation of State indexes and criminal history files; (e) public resistance to a data base that identified all FOID card holders; (f) significant increased burden on local law enforcement agencies; and (g) the need for additional fingerprint technicians and record evaluators at State identification bureaus.

Estimated costs. Because of the novel and complicated nature of this option and its use of technologies still under development, it has been possible to estimate only part of the costs of setting up such a system. Consequently, the following estimates should be viewed as only a rough measure of system costs.

For a system involving a biometric check at all dealers, total start-up costs are estimated at \$344–572 million and annual operating costs at \$203–295 million. For a system restricting the biometric check to commercial dealers (an estimated 35% of all dealers), total start-up costs could be an estimated \$239–362 million and annual operating costs would be \$171–232 million.

(3) *Option B2: Smart card containing disqualifying information.* In this variation of a pre-approval system, everyone would carry a card (e.g., a driver's license) that would have electronically imprinted identification information, including biometric data such as fingerprints. Whenever someone became legally disqualified to purchase a firearm (for example, by being

convicted of a felony), the card would be updated to contain this information.

Anyone attempting to buy a firearm would have to produce the card. The card would be put into a reader that would indicate whether the carrier was prohibited from purchasing firearms.

Advantages and disadvantages. 1. The major advantage is that this procedure would not require a communications system—the disqualifying information would be on the card itself.

2. A major disadvantage is the cost of implementing such a radically new identification system and providing criminal justice agencies with the facilities to update these cards.

3. There may be substantial public resistance to the requirement to carry such a card, especially since the need for interstate coordination may require the creation of biometric databases for the Nation's adult population.

Estimated costs. Sufficient information does not currently exist to make reliable cost estimates of this novel and far-reaching option.

II. D. Section 4. Appeal procedures. The appeals process commences at the point that the applicant receives final notice that the sale has been denied and has been notified of the reasons for denial. This may occur after "secondary verification" (Option A) or after denial of a firearm owner's identification (FOID) card (Option B). As described in both options, fingerprint checks against State and Federal data bases would have been completed prior to final denial and initiation of the appeal period.

During the appeal, the applicant may challenge the denial on grounds that the data are inaccurate (e.g., an acquittal was recorded as a conviction); that the record is incomplete (e.g., a subsequent pardon was not recorded in the data base); or that the offense does not represent a disqualifying offense under the Federal or State standards. Challenges based on inaccurate identification would not occur at the appeals stage since fingerprint checks prior to denial would, presumably, catch errors of this type. The appeals process would proceed as follows:

1. Following final denial, the applicant is advised of rights to appeal and given a document to initiate the appeal.

2. The applicant would go to the agency designated to handle appeals (or would submit documents to a non-local appeals agency).

3. The applicant would be provided a copy of the criminal history record that was used as the basis for disqualification.

4. The applicant would indicate the basis for the appeal. The appeals agency

would assist the applicant either directly or indirectly by providing names, addresses, or telephone numbers for inquiries to in-State or out-of-State agencies.

5. If errors could not be corrected on the spot or by telephone, the applicant would obtain and submit to the appeals agency documents supporting eligibility (for example, court records of acquittal, pardon, or restoration of rights).

6. The appeals agency would then review the documentation and rule on the appeal. If eligibility was established, the individual would receive a FOID card or Certificate to Purchase.

7. If eligibility was denied, the applicant would be advised of rights to a court challenge.

Additional considerations. 1. The agency (or agencies) assigned responsibility for appeals must be determined. The agency could be the decision agency (State or Federal), a local agency, or a separate entity (State or Federal). Although the latter option would provide an independent review, the decision agency would probably be more familiar with the criminal history records. Local agencies would best serve as a conduit to the official appeals agency rather than as the agency responsible to rule on the appeal.

2. The degree of formality for the appeal must be determined. For example, a separate "Board" could be established, or alternatively, an existing unit within an agency could be designated.

3. Procedures for applicant assistance must be developed. In particular, procedures regarding challenges based on out-of-State records should be developed and coordinated on a national basis.

4. The time for the appeal and decisions may have to be limited.

5. Some States may consider their existing procedures for correcting or updating criminal history records as adequate for a felon identification system.

III. Legal and Policy Issues

Based upon legal research of State and Federal case law conducted for the Task Force, there appear to be no constitutional impediments to the creation of felon identification systems as described in this report. (See Legal and Policy Issues Relating to Biometric Identification Technologies, SEARCH Group, Inc., June 1989.) Criminal history checks, including those based on fingerprints, are currently required by State and Federal law for a variety of non-criminal justice purposes such as job applications and security

clearances. Depending on the jurisdiction, such checks are conducted for those desiring to be lawyers, child care workers, State or Federal employees, bartenders, etc. The courts have generally upheld these requirements as rationally related to legitimate governmental purposes. Nonetheless, the use of felon identification systems in firearm sales does raise a variety of important policy issues that may have to be addressed in Federal and State legislation. Some of the major issues are outlined here.

A final selection of any particular identification system ought to be preceded by a rigorous legal review by appropriate divisions within the U.S. Department of Justice.

A. A Federal or State System; Mandatory or Voluntary?

There are four broad possibilities for implementing a felon identification system: (1) To create a self-standing Federal system that is run entirely by Federal officials; (2) to mandate a cooperative Federal-State system in which State officials carry out a substantial portion of the criminal history checks; (3) to establish a mandatory Federal standard that States could meet in a variety of different ways; and (4) to offer the States several models for a voluntary cooperative Federal-State system and make Federal resources and leadership available to assist the States.

(1) The Task Force did not focus its research efforts on the creation of an independent Federal system for the simple reason that 90% or more of arrests and convictions in the United States are handled by State and local officials. Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State and to determine whether a conviction meets the Federal standard for disallowing a firearm purchase. Moreover, State officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential for an effective felon identification system.

(2) Given the necessity for active State involvement, the Federal government could create a felon identification system by mandating that the States adopt a particular system, such as one of those detailed here or a modification thereof. Under this implementation strategy, the Federal government would select a felon identification system and each State

would be required to work with Federal officials to implement it. The result would be a uniform system in each of the 50 States. Such a mandate could be enforced by making State cooperation a condition for the receipt of specified Federal funds or, more directly, for the sale of firearms within the State (under the Federal authority over interstate commerce).

(3) Another possible implementation plan is to allow variation across the States in the kind of system established as long as each State's system met certain minimum Federal standards. As noted above, 20 States and the District of Columbia currently conduct a pre-purchase criminal history check for those who wish to buy handguns. There is, however, substantial variation among these systems. In some States checks are conducted by local authorities; in others by State authorities. Some States access only State records when conducting the check; others also access Federal records. A few States require fingerprints; most do not. Of these existing systems, some might be as effective as the options detailed in this report in keeping convicted felons from purchasing firearms through legitimate retail outlets. Others might be easily upgraded.

All of the options presented in this report meet at least two minimum standards: all firearm purchases from federally licensed dealers are covered; and a name check of both State and Federal automated data bases is conducted for evidence of an arrest for a serious crime (such checks usually also include date of birth, race, and sex). It appears that only four States and the District of Columbia currently meet both standards.

(4) Finally, the Federal government could take a leadership role in designing one or more felon identification systems and in encouraging, but not mandating, State cooperation. Under this strategy the Federal government would expand its own resources at the FBI and BATF to make such a system(s) possible and would provide expertise and technical assistance to State and local officials.

B. Sources of Funding for Criminal History Checks

The Federal government will be required to invest substantial resources in national data bases, including both personnel and equipment, in order to handle the increase in workload that would result from a felon identification system for firearm sales. State repositories also will require substantial additional resources to handle the workload increase and to continue to improve data quality. Given these

resource needs, policymakers will have to determine the appropriate funding mechanism for carrying out the required criminal history checks. Such funding mechanisms could include one or more of the following: (1) direct appropriations by the Federal and State governments, (2) user fees by gun purchasers, and (3) increases in firearm dealers' licensing fees through the Bureau of Alcohol, Tobacco and Firearms. In addition, legislation would have to address whether the State and Federal governments would share any revenue generated by a felon identification system and in what proportion.

C. Release of criminal history information to gun dealers

The Task Force has not proposed any options that would give gun dealers direct access to criminal history record information. Such access would violate established standards of privacy and confidentiality as well as numerous State statutes that preclude access to criminal history records by non-law enforcement personnel. Nonetheless, several of the options do require notification to the dealer that a criminal history check has turned up evidence of an arrest for a felony or serious misdemeanor. Even this limited provision of information may violate some State statutes or regulations.

Under Option A and its variants, for example, the dealer would learn whether there was evidence that the prospective purchaser had a criminal history record, but the dealer would not learn the substance of the record itself. This may be viewed by some as a release of criminal history information to non-law enforcement personnel in a way that would embarrass or stigmatize the prospective purchaser. Indeed, in many (perhaps most) cases an initial indication of a criminal record would eventually be shown to be untrue because it resulted from a misidentification with someone else with a common name and date of birth. Yet a "hit" on the initial telephone check will be known to personnel at the gun store and perhaps to customers or others who are present. As a result, the purchaser's reputation within his community may be harmed through no fault of his own. This issue indicates the need for legislative prohibitions on the release by gun dealers and others of anything learned during the telephone check of purchasers, although it may be difficult to enforce such prohibitions against customers or others who may overhear or observe the results of a "hit" during the telephone check.

An important privacy consideration is whether gun dealers in a point-of-sale system would keep the records or lists of those who failed the initial check. Operationally, as in the options described in this report, such recordkeeping is not necessary and could be prohibited by law.

Note that under Option B and its variants the prospective purchaser has already completed a full-fledged criminal history check before going to the gun dealer. Thus, the gun dealer only sees those who have previously qualified to purchase a firearm. He does not learn about those who failed the pre-approval procedure. Only in the few cases where the purchaser had been arrested between issuance of the FOID card and his attempt to purchase a firearm would any disqualifying information become known to the gun dealer. Another issue of relevance to gun dealers is whether or to what extent their liability ought to be limited by law for providing firearms to disqualified persons on the basis of inaccurate information they received from law enforcement authorities.

D. The issue of accuracy

The Congressional mandate under Section 6213 of the Anti-Drug Abuse Act calls for the "accurate identification of felons" who attempt to purchase firearms. The statute, however, does not specify the level of accuracy that would be acceptable. Since, for the reasons elaborated earlier in this report, a perfectly accurate system is not feasible in the foreseeable future, policymakers will have to decide how much accuracy is required for an effective felon identification system. Generally speaking, the most accurate systems are those that are the most expensive and that create the greatest inconvenience for the gun purchaser.

The issue of accuracy has two sides: (1) to correctly identify felons who attempt to purchase firearms and (2) not to reject eligible persons who attempt to purchase firearms. Deficiencies in identification documents for positively establishing identity, incomplete criminal history records, and the prevalence of common names and dates of birth complicate these two tasks and make it that much more difficult to achieve both simultaneously. A system, for example, that focused primarily on not rejecting eligible persons might prove incapable of correctly identifying a large number of felons. On the other hand, a system that single-mindedly sought to keep convicted felons from purchasing firearms might catch in its nets numerous law-abiding individuals who have a right to purchase firearms.

How the balance is to be struck between these two goals—to correctly identify felons and not to reject eligible persons—is a policy, not a technical, judgment. The options outlined in this report present a variety of schemes for meeting the two sides of the accuracy mandate.

Because criminal history records are subject to error, the dictate for an accurate system points to the need for mechanisms through which prospective gun purchasers can update and correct criminal history information. Fortunately, such procedures currently exist in all the States. Any felon identification system for firearm sales ought to have a linkage to these procedures so that corrections to criminal history records can be made in a timely fashion. Otherwise, persons eligible to purchase firearms may be improperly prohibited from doing so.

The requirements for establishing an accurate felon identification system highlight the need for complete and up-to-date criminal history records, preferably in an automated format. Improvements in the accuracy of criminal history records would generate benefits in a wide range of criminal justice applications.

E. Creating a data base of firearm purchasers

None of the options outlined in this report provide for or require the creation of a national data base of firearm purchasers. Since all the options are essentially State run, any recordkeeping, whether manual or automated, regarding the application to purchase, or the actual purchase of, firearms would be maintained at the State level, as is currently the case in the States that now require a written application and criminal history check for firearm purchases.

Operationally, the maintenance of computer inquiry logs—transaction records that do not necessarily require the applicant's name—is necessary to measure system traffic and cost and to ensure that inquiries are made only by legitimate dealers for legitimate purposes. In addition, any pre-approval system (such as Option B and its variants and the secondary verification of Option A) must maintain records of successful applicants if the system is to have the capability of revoking permits (or FOID cards) if a holder is convicted of a disqualifying felony. This could apply under systems that require the return of a revoked permit and under those in which dealers check the validity of a permit prior to sale.

The development of a data base of gun purchase applicants raises the

possibility that such records might be used for other purposes. For example, individuals included in such a data base might be treated as possible suspects in crimes involving firearms. If fingerprint data were included in the file, latent fingerprints might be routinely run against the data base.

Policymakers, of course, could prohibit such use of applicant records through law. Moreover, strict limits could be placed on the time during which records of firearm applicants were maintained and on the extent to which applicant names would appear on transaction logs. In point-of-sale systems, time limits could be placed on the retention of initial inquiry records which do not result in a "hit." Pre-approval systems, however, have greater recordkeeping requirements if the possibility of revoking permits is to be maintained.

F. Potential "Tracking" of Firearm Purchasers

Any system that requires a criminal history record check prior to purchase of a firearm creates the potential for the automated tracking of individuals who seek to purchase firearms. It would be possible, for example, for authorities to "flag" the names of specific individuals, perhaps suspects in criminal cases, who might seek approval to purchase a firearm. If an automated criminal history check was conducted on such a flagged individual as part of an application to purchase a firearm, an electronic message to this effect could be sent to the interested law enforcement agency without the knowledge of the applicant. In this way authorities could learn about the potential purchase of a firearm by someone under investigation or surveillance as well as the geographic location of the purchaser.

Policymakers will have to decide whether to prohibit all such tracking activity or to permit it in some circumstances (for example, notifying the Secret Service when a person suspected of being a threat to the President purchases a firearm). If some tracking is to be permitted, then clear rules and conditions for such activity will have to be established.

G. Issuing Documents Authorizing Firearm Purchases

The pre-approval options outlined here (Option B and its variants) require the issuance of some kind of documentation (FOID card, certificate to purchase, permit, etc.) for the prospective gun purchaser to present to the gun dealer certifying that the purchaser is not a convicted felon.

Moreover, the point-of-sale options (Option A and its variants) have a similar requirement for those who fail on the original telephone check.

Such a requirement, especially if mandated by Federal law, raises policy issues regarding whether the firearm purchaser ought to be singled out and forced to prove through documentation that he is not a convicted felon before he can engage in an otherwise lawful commercial activity. In addition to the inconvenience that such a requirement creates, it may be viewed as demeaning by some.

The other policy issue that such a requirement for documentation presents is that this may be interpreted as an initial step toward a national identification card, something that members of Congress and others have strongly opposed in the past. It should be noted, however, that there are several important differences between a national ID card system and the kinds of documentation required in the options in this report. As usually conceived, a national ID card would be an identification document that was issued to all adult Americans and which had to be carried at all times; yet neither of these conditions would apply to the kind of documentation discussed in this report. FOID cards or firearm purchase permits would be required only for those who wish to purchase firearms and would have to be carried only at the time of purchase. Legislation could prohibit the use of such cards for unrelated identification purposes.

H. The Use of Biometric Data

Many of the options detailed in this report require the collection of biometric data in the form of fingerprints at some stage in the approval process. Given the traditional association of fingerprints with law enforcement, there may be public resistance to the requirement to provide fingerprints at a law enforcement agency or at a gun dealership in order to purchase a firearm. Such concern may be heightened if the fingerprints are kept on file, manually or electronically, and are subsequently used for unrelated investigative purposes, criminal or otherwise. As noted earlier, such use of the fingerprints provided in a felon identification system could be prohibited by law.

Other biometric technologies, such as retinal scans, could be introduced into felon identification systems, especially to verify identity against a biometrically based identification card. Because some of these technologies might be perceived as physically more intrusive than fingerprints, public opposition to their

use may be greater than to the use of fingerprints. On the other hand, this may be counterbalanced by the fact that these newer technologies are not as closely associated with law enforcement activities as fingerprints.

IV. Supplementary Materials

A. Section 1. Relevant Federal Statutes

Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Sec. 6213, 102 Stat. 4360 (1988), as codified in 18 U.S.C. Sec. 922 note (1989)—Identification of Felons and Other Persons Ineligible to Purchase Handguns—(a) Identification of Felons Ineligible to Purchase Handguns—The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

(b) Report to Congress—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

(c) Additional Study of Other Persons Ineligible to Purchase Firearms—The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18

months after the date of the enactment of this Act and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

(d) Definitions—As used in this section, the terms "firearm" and "dealer" shall have the meanings given such terms in section 921(a) of title 18, United States Code.

Gun Control Act of 1968, 18 U.S.C. Sec. 921 et seq., as amended by the Firearms Owners Protection Act, Pub. L. 99-308, 100 Stat. 449 (1986).

921 (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) Any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) Any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

922 (d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substance Act [21 U.S.C. 802]);

(4) Has been adjudicated as a mental defective or has been committed to any mental institution;

(5) Who, being an alien, is illegally or unlawfully in the United States;

(6) Who has been discharged from the Armed Forces under dishonorable conditions; or

(7) Who, having been a citizen of the United States, has renounced his citizenship. This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition

to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

922 (g) it shall be unlawful for any person—

(1) Who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Who is a fugitive from justice;

(3) [Who] is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802];

(4) Who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) Who, being an alien, is illegally or unlawfully in the United States;

(6) Who has been discharged from the Armed Forces under dishonorable conditions; or

(7) Who, having been a citizen of the United States, has renounced his citizenship; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

IV. B. Section 2. Current Practices

(1) Federal Control of Firearms

The Federal role in the control of firearms is derived primarily from the Gun Control Act of 1968 as amended and is overseen at the National level by the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury. BATF has over 40 field offices and 500 field agents used for the control of firearms, alcohol, and tobacco; over half of the agents are devoted to firearms control. There are approximately 270,000 federally licensed firearm dealers. It is estimated that 60–70% are noncommercial dealers (hobbyists, collectors, etc.) and account for 20–25% of all sales of firearms. Primary control is maintained through the licensing of dealers and the recording of sales.

Prospective dealers apply for a license through BATF. Ordinary dealers pay a fee of \$10 a year; pawnbrokers pay \$25 a year; and gun dealers who sell "destructive devices" may be required to pay a fee of up to \$1,000 a year. Licenses are issued for 3 years after inquiry and investigation has determined that the applicant is legally

qualified. Disqualification can be made if the applicant is under 21 years of age, has previously violated the laws and regulations governing firearms, or is ineligible to possess a firearm under Federal law. This license may be renewed, but may not be transferred if the business is sold. There are a variety of regulations that affect licensees; and licenses may be suspended or revoked for cause.

Retail firearm sales require the completion of BATF form 4473 (Exhibit 5) for each over-the-counter sale or transfer to an end user. This form requires the prospective owner's name, address, date and place of birth, height, weight, and race. It also requires a certification that the prospective buyer is not prohibited from owning a firearm because of a prior felony conviction or because he is in one of the several other categories of persons who are precluded from ownership by Federal law—including, among others, those dishonorably discharged from the Armed Forces, habitual drug users, and those who have been committed to a mental institution. The type and serial numbers of any weapons purchased are also recorded. The dealer is required to see appropriate identification from the prospective owner, such as a State driver's license, and must make a note of the method of identification on the BATF form 4473. There are stiff criminal penalties for false statements on the form—up to 5 years in prison.

Records relating to firearm transactions must be retained on the premises of the dealer for a period of 20 years. If the dealership is sold, the records be must transferred upon issuance of a new license. If the dealer goes out of business without a successor, the records of transactions must be shipped to BATF's long-term storage facility in Landover, Md. BATF agents may enter gun dealers' facilities and inspect any or all of the records that are required to be maintained by Federal law. These examinations are constrained by the law, which spells out in some detail the conditions (frequency and purpose) under which such investigations may be made. As an example, in the event of a crime involving a firearm, BATF secures a description of the weapon, including the serial number, and traces it from the manufacturer or importer through the distributor to the retail dealer where the records of sale are examined in an effort to trace the weapon to the owner of record.

Because of limitations in manpower, BATF agents concentrate their examination of records on high-volume retail stores, dealers who are suspected

of illegal gun sales, and other individuals who come to the attention of the agents through other sources. In their examination of these records, the agents are especially alert to the sale of two or more handguns to the same purchaser within 3 days. Other causes for suspicion include sales to suspected gang members or sales of high-powered weapons to suspected "straw purchasers," those buying guns for others who are ineligible. If an inspection is not satisfactory, BATF (1) may note the problem and reinspect in about 3 months, (2) notify the dealer that his license is in jeopardy if corrective actions are not taken, (3) take other administrative action, or (4) initiate criminal proceedings.

(2) State Practices Regarding Firearm Sales

Currently, 20 States and the District of Columbia, covering 55% of the Nation's population, conduct a criminal history check of persons desiring to purchase a handgun prior to allowing that person to take possession of the weapon (Exhibit 7). Four of these States and D.C. include the purchase of long guns in this requirement. In 10 States and D.C. the burden of responsibility for pre-purchase criminal history checks falls solely on local law enforcement agencies (either the police or sheriffs department); in 5 States this responsibility is solely that of a State agency; and in another 5 States agencies at both State and local levels conduct criminal history checks prior to purchase.

The levels of criminal history information accessed in these checks vary among the States. Eight States access files no higher than those maintained at the State level; 12 States and D.C. access national criminal history records.

In most States this criminal history check is done using name, date of birth, and other identifying characteristics such as race and sex, but excluding fingerprints. In six States and D.C. fingerprints are taken from the applicant for use in the criminal history check. In one of these States only a thumbprint is obtained.

The criminal history check is conducted as part of an application process involving a mandatory waiting period. In 15 States this application process and waiting period are required for each handgun purchase (a permit is obtained through this process in four of these States). In six States a successful application for purchase of handguns results in a permit or identification card which allows purchases for a specified

or indefinite time period. In the four States and D.C. that require criminal history checks for the purchase of long guns, a successful application results in an identification card, permit, or registration certificate.

In some instances, a criminal history check is conducted after the purchaser of a handgun has taken possession of the weapon. In Pennsylvania, a post-purchase check is conducted by the State agency (in addition to a pre-purchase check conducted locally). Two States (Michigan and South Carolina) conduct a criminal history check on handgun purchasers only after the buyer has taken possession of the weapon. In Michigan this check is done by the local agency, and in South Carolina it is done by the State agency.

State residents making their initial purchase of a handgun in the 20 States and D.C. conducting a pre-purchase criminal history check are subject to waiting periods ranging from 2 days to 6 months (Exhibit 8). The two States that conduct only a post-purchase criminal history check on handgun purchasers have no waiting period. One State (Wisconsin) requires a 2-day waiting period for handguns, but does not conduct a criminal history check on the purchasers of handguns. The waiting periods for the purchase of long guns in the four States and D.C. that require a criminal history check for such purchases range from 15 to 60 days. Local jurisdictions in many States may have additional restrictions or requirements for the purchase of handguns and long guns.

Application Requirements for Firearm Purchases in the 10 Largest States (as of April 1989; Population Figures are for 1988)

California (pop. 28,074,000). A written application is required to purchase a handgun. This is submitted by the firearm dealer to the State Department of Justice. Purchaser must wait 15 days before taking possession. Within this 15-day period, the application may be rejected based on the results of name check done against State criminal history files. Eventually, but not necessarily during the 15-day waiting period, the State DOJ conducts a name check against NCIC.

New York (pop. 17,755,000). A written application is required for the purchase of handguns. This is made to the city or county licensing officer (usually the Police Commissioner or Sheriff). Purchaser pays for gun, then takes receipt and application for permit to local law enforcement agency where

fingerprints are taken. Application materials are forwarded to the State Division of Justice Services for State records check and FBI check. Approval must be granted for purchaser to take possession of gun. Processing of application takes up to 6 months. The applicant must complete firearms safety and training course during this time. When the processing is complete, the local law enforcement agency informs the Superior Court Judge who issues the permit. If the application is denied, applicant receives a refund from the dealer. An application for permit is required for possession and purchase of all firearms in New York City.

Texas (pop. 17,192,000). No written application process is mandated by State law.

Florida (pop. 12,249,000). No written application process is mandated by State law.

Pennsylvania (pop. 11,860,000). A written application is required for handguns. Within 6 hours, the firearms dealer forwards this application to local Chief of Police or Sheriff. There is a 48-hour waiting period. The local law enforcement official may block the sale during this time. A copy of the application is forwarded to the State Police within 7 days. The State Police conduct a name check against their criminal history files, but generally this is done after the purchaser has taken possession of the weapon. If they get a "hit," a field investigation is initiated.

Illinois (pop. 11,584,000). A written application must be submitted to the State Police to obtain a Firearm Owner's Identification Card which is required for purchase of firearms. Application is checked against State and Federal criminal history files. If ID card is issued, it is valid for 5 years or until owner becomes prohibited from firearms possession. Waiting periods of 72 hours for handguns and 24 hours for long guns are in effect. Only pre-registered handguns are allowed in Chicago; no new handguns may be brought into the city.

Ohio (pop. 10,779,000). The written application mandated by State law pertains only to firearms designed for military use; however, some local jurisdictions have enacted stricter legislation. Among major cities, a permit to purchase is required for any firearm in Cleveland, Columbus, Dayton, and Toledo, and a Handgun Identification Card is required for the purchase of handguns in Cleveland, Dayton, and Toledo.

Michigan (pop. 9,231,000). The Michigan License to Purchase is required for all handgun purchases. This is obtained at the local police agency.

Upon purchase, the seller documents the sale on the application and forwards copies to the local police agency and the Department of State Police. The local police are responsible for conducting State and Federal criminal history checks. No waiting period has been established. In Detroit a permit is required for all firearms purchases.

New Jersey (pop. 7,756,000). A Firearm Identification Card is required to purchase rifles and shotguns. This card is valid until holder becomes prohibited from possessing firearms. A handgun permit is required to purchase a handgun. This permit is valid for 90 days. A written application to the local Chief of Police is required for each. Fingerprints must be submitted with the application. Applications are sent to State Police for NCIC check. In reality, the processing time for applications is 6-10 weeks (somewhat longer than the time stated in the law). The local law enforcement agency receives results, then makes a recommendation to the District Court which is the actual issuing authority.

North Carolina (pop. 6,512,000). A permit is required for the purchase of a handgun. Written application is made to the local Sheriff. There is up to a 30-day waiting period for approval. The Sheriff conducts a name check against the State criminal history files. The Sheriff decides on the basis of this check (and any of his own information) whether to accept or reject the application.

Illinois Firearm Owner's Identification Card

In 1968, the Illinois legislature enacted the Firearm Owner's Identification Act which provides "a system of identifying persons who are not qualified to acquire or possess firearms and firearm ammunition within the State of Illinois." The Act provides for the issuance of Firearm Owner's Identification (FOID) cards to persons authorized to acquire or possess firearms or ammunition.

The provisions of the Act are administered by the Illinois State Police. An applicant submits a notarized card application form (with photo) to the Illinois State Police. The applicant must indicate whether he:

- (1) Has previously been convicted of a felony;
- (2) Has been a patient in a mental institution within the preceding 5 years;
- (3) Is addicted to narcotics; or
- (4) Is mentally retarded.

Rejection of the application may occur for affirmative responses to any of the above or for perjured responses.

Upon receipt of an application, a criminal history check is conducted utilizing a name index search through both the Illinois and Federal criminal history records systems. An additional check is conducted with the Illinois Department of Mental Health and Disabilities. After determination that the applicant is not an ineligible person, a FOID card is issued with a 5-year expiration date.

Applicants who are rejected may appeal to the Chief of the Identification Bureau of the Illinois State Police for an administrative hearing for reconsideration and must, by personal appearance, present relevant documentation to support a reconsideration. Subsequent appeals must be made through the State Court.

If State authorities learn that a FOID cardholder has become ineligible (for example, by a felony conviction), the card is revoked and a voluntary return of the card is requested. The revocation is noted in the State criminal history files. If the card is not returned voluntarily, it may be retrieved by the local police.

Illinois authorities report that approximately 200,000 FOID cards are issued annually. An estimated 78% of all cards are issued with the first application; the final rejection rate is about 5%.

The Illinois State Police have noted three problem areas for administration of the program:

1. the identification procedures used do not insure a positive identification;
2. court notification of disposition of felony charges for inclusion in criminal history records has not been accurate or timely; and,
3. private mental health institutions are not required to share information for the record check.

Virginia's New Point-of-Sale Approval System

The following is a summary of procedures being established to implement the recently enacted Virginia statute requiring felony checks for persons wanting to purchase firearms within the State. The legislation was enacted by both houses of the Virginia legislature in February 1989 and was signed by the Governor in April 1989. The system is to be implemented by November 1, 1989. All information was obtained from the Virginia Department of State Police.

One of the unresolved issues is which gun dealers are covered by the Act. The implementing agency, the Department of Public Safety, would prefer that small local dealers be exempted from coverage. They indicate that in

comparison to large dealers who may sell 1,400-2,000 weapons covered under the bill each month, small dealers may sell no more than one or two each year.

The statute applies to:

1. Handguns with a barrel of less than 5 inches, and
2. Semi-automatic center fire rifles or pistols that expel projectiles by action of an explosion, have a magazine that holds more than 20 rounds of ammunition, and are designed by the manufacturer to accommodate silencers, bayonets, tripods, flash suppressors, or folding stock.

Procedures for Implementation

1. The purchaser presents two pieces of ID to the dealer.
2. The dealer calls the State Police using a toll-free telephone number. (The system will operate 7 days a week from 8 AM to 10 PM. The Records Management Division estimates that they will receive 250,000 inquiries a year).
3. The dealer identifies himself by giving his firearm dealer ID number and the control number from the State firearm purchaser's application form.
4. The State checks the validity of the ID number and confirms that the control number has been assigned to that dealer. (This is designed to prevent invalid inquiries. A micro-computer system is being developed that will contain dealer identification information and list the control numbers assigned to each dealer.)
5. The dealer provides the State Police with the applicant's name, sex, race, date of birth, and social security number.
6. While the dealer remains on the phone, the State Police make a name check against the State index to criminal history records and the "wanted persons" list. An exact name, sex, race, and date-of-birth match will be required to make a "hit." It is estimated that 16-20% of the telephone inquiries will result in a "hit." The total time for a phone call is expected to be about 3 minutes.

7. If there is a hit against the State index, the dealer is advised that the sale cannot be completed. State Police then have until the dealer's next close of business day to determine if the applicant was actually convicted of a disqualifying felony. During this time, checks will be made against the State criminal history records, the NCIC "wanted persons" records, and the Interstate Identification Index (III). If no record is found within this time, the dealer is advised that the sale may proceed. If a disqualifying felony is found, the dealer is advised that the sale may not proceed. The dealer then

forwards a copy of the State application form to the State Police to permit cross checking of the control number and an appeal by the applicant.

8. If the sale is approved, the application form (with the dealer's control number) is completed and forwarded to the State Police. A check is then made to verify the data.

9. If there is no "hit" against the State index in the initial inquiry, the dealer is advised that the sale may proceed immediately. The State application form containing the control number is then forwarded to the State Police. The form will have been signed by the applicant attesting to the absence of any disqualifying felonies. Upon receipt of the application form, a check is initiated against State and Federal criminal history records. If a disqualifying felony record is found, this information and a copy of the application form is forwarded to the dealer and to the chief law enforcement official in the jurisdiction in which the sale was made. It is anticipated that the law enforcement official will issue an arrest warrant and initiate efforts to retrieve the firearm.

10. Appeals are based on the applicant's general right to inspect and correct his record. In general, applicants will be directed to the local police department who may take fingerprints to support the record check. (The State does not require a fingerprint check.) The applicant would also be advised of any out-of-State records and would be assisted in contacting out-of-State officials.

11. The system described above applies to Virginia residents only. Out-of-State residents, who may legally purchase long guns but not handguns, must apply for a permit. This application process, during which a criminal history check is conducted, may take up to 10 days.

Maintenance of Records

If the applicant is approved, a log of the inquiry transaction (including the applicant's name) will be maintained in an active file for 30 days. Thereafter, the information will be kept in an inactive file for audit purposes.

If the applicant is disapproved, a record of the inquiry and the basis for the denial will be retained for 60 days (the length of time during which the applicant may appeal the denial). If the applicant does not appeal, the record of the denial will be transferred to an inactive file and maintained for audit purposes.

If an appeal is successful, the record will be maintained in accordance with

the procedures established for approved applicants (as described above). If an appeal is denied, a copy of the application form, marked "appeal denied," will be forwarded to the dealer. No reason will be given for the denial to prevent the dissemination of criminal history to the dealer. A record of the appeal denial will be maintained in an inactive status for audit purposes.

Estimated Cost

Virginia officials estimate that this system will require 16 new full-time personnel and will cost \$481,000 for 12 months operation (\$90,000 for start-up costs and \$391,000 for annual operating costs). This will cover staff, space, forms, communications, and equipment.

Differences Between the Virginia System and Option A

1. The Virginia system applies only to specific categories of firearms and may be further limited to selected categories of dealers.
2. In the Virginia system Federal and interstate records are not checked prior to sale unless there is a "hit" against the State index. Under Option A, a check is automatically made against State and Federal records.
3. Virginia checks are based on name only and do not require a personal appearance at a law enforcement agency until the final appeal. Under Option A, the secondary verification on which a disapproval is based is supported by a fingerprint check.
4. The Virginia system has strict deadlines for government action, which are not included in the basic Option A.

IV. C. Section 3: Access to Federal criminal history records

Through both its Identification Division and the National Crime Information Center (NCIC), the FBI serves as a central access point for Federal and State criminal history record information. The Identification Division maintains fingerprint-based criminal history records on approximately 25 million individuals who have been arrested at some time in their lives for a serious offense (felony or serious misdemeanor). These records are described below. In addition, the FBI operates the Interstate Identification Index (III), accessed through the NCIC telecommunications network, which notifies law enforcement agencies requesting criminal history information whether a record exists in one of the 20 States (listed below) that currently participate in III. The III is a cooperative Federal-State program for the interstate exchange of criminal history record information that makes available in a

timely manner criminal history information to the law enforcement community.

III participating States maintain their own computerized criminal history (CCH) files at the State level and provide information from these files when a request comes either through the NCIC network or directly to the State through the National Law Enforcement Telecommunications System (NLETS). Most States that do not participate in III also maintain automated CCH systems, but these are not directly tied into the NCIC system. These data, if automated, can be accessed by a direct request through NLETS. In addition, when a request comes in to the FBI through NCIC, it provides whatever automated data it has in its Identification Division from non-participating States.

In order to provide rapid access to these State and Federal criminal history files, the FBI maintains an automated master name index (MNI) of over 12.5 million records, with over 70,000 new records being added each month. An index record contains an individual's name, aliases, physical description, identifying numbers, fingerprint classification, and the location(s) of the criminal history record(s).

Criminal history records, sometimes call "rap sheets," are cumulative, name-indexed histories of an individual's involvement in the criminal justice system for serious offenses (felonies and serious misdemeanors). Excluded are records on arrests and subsequent dispositions for such offenses as drunkenness, vagrancy, disturbing the peace, and traffic violations (except manslaughter, driving under the influence of alcohol or drugs, and hit-and-run). Offenses committed by juvenile offenders are excluded unless a juvenile is tried as an adult.

Access to these Federal data bases and indexes is through the NCIC system. The NCIC computer equipment is located at FBI headquarters in Washington, D.C. Connecting terminals are located throughout the United States, Canada, Puerto Rico, and the U.S. Virgin Islands in police departments, sheriffs' offices, State police facilities, Federal law enforcement agencies, and other criminal justice agencies. The system includes 37,000 terminals in 17,000 locations and provides uninterrupted service 24 hours a day, 7 days a week. Over 130 dedicated telecommunications lines link Federal and State agencies together. Each State maintains a central Control Terminal Agency (CTA), which is directly connected to NCIC. Telecommunications lines and equipment within the State provide

State and local criminal justice agencies access to the control terminal.

The NCIC system provides direct, electronic access to the Interstate Identification Index of records maintained in the 20 participating States and to the Identification Division's automated records. This combined index is now known as the Automated Information System—Phase III (AIS-III). Moreover, NCIC maintains several national "hot files." These hot files contain identifying information concerning wanted and missing persons, stolen vehicles, and identifiable stolen property of several types.

In addition to the computerized AIS-III MNI, the Identification Division maintains three criminal history files designed for use by Federal and State agencies:

1. An automated criminal history file which contains rap sheet information on 12.5 million persons arrested for the first time and reported to the FBI since July 1, 1974, or known to the FBI with a year of birth 1956 or later.
2. Manual criminal history records on approximately 8.8 million individuals born in or after 1929 but arrested at some time before July 1, 1974. There is an automated master name index to these data, but it is available only for in-house use and not through the NCIC network. The manual rap sheet jackets are maintained at various locations in the Washington, D.C., area. Several of the options detailed above require merging the index for these records into the AIS-III index.
3. Manual criminal history records on about 3.6 million offenders born before 1929 whose files are maintained by the Identification Division. There is no automated index to this older information.

In general, indexes at the Federal level are arrest-based files containing only identifying information on individuals arrested for "fingerprintable" offenses. See Exhibit 4 for an overview of these indexes and data bases.

An authorized criminal justice agency can make an inquiry (a QH message) on name, sex, race, date of birth, and numeric identifiers such as Social Security Number, State Identification Number (SID), or FBI number. Most initial searches are on name, sex, race, and date of birth, if known. In response to a QH inquiry, the requester will be provided one of the following responses:

1. A single matching record response—a "hit."
2. A multiple matching response, up to a maximum of 15 records—a "hit."
3. A "no record" response—a "no hit."

A "no hit" response does not necessarily mean that there is no criminal history record on the individual being investigated. The FBI Identification Division maintains fingerprints on approximately 25 million persons (21 million automated). Of these, about half, 12.5 million, are contained in the AIS-III MNI, discussed above. In order to access the information in the additional records maintained by the FBI, a law enforcement agency can submit a fingerprint card, usually through the mail, to the Identification Division for a more detailed search. Additionally, there may be criminal history information at the local or State level for which the arrest fingerprint card was never forwarded to the FBI.

As indicated above, a positive response to an NCIC inquiry (called a QH response) can result in either a single record response (one individual) or a multiple record response (up to 15 individuals). The response provides the requester with three types of information:

1. The person's name, including aliases, physical descriptors, and numerical identifiers.
2. The identity of the data base(s) containing the criminal history record information.
3. The means to be used to obtain the record(s).

In order to retrieve a specific criminal history, a criminal history record request (QR message) containing the person's FBI or SID number must be used. The identifiers are obtained from the name-based QH inquiry or from other sources such as State CCH records or investigative files. The QR message will result in an automatic notification to all data bases identified as having information on the subject being

investigated. The CCH systems of the States participating in III will be queried and the individual's rap sheet from one or more III States will automatically be forwarded via NLETS. FBI records on Federal offenders and non-participating III States will be sent on-line using NCIC telecommunications.

If the automated name index for the records of the 8.8 million persons born in or after 1929 and arrested before July 1, 1974, is integrated into the AIS-III index, then under the initial verification procedure proposed in Option A (telephone check by the gun dealer), an NCIC inquiry could be conducted within a matter of minutes on approximately 21.3 million individuals who have been arrested for a felony or serious misdemeanor.

The 20 States participating in III as of

June 1989:

California	New Jersey
Colorado	New York
Connecticut	North Carolina
Delaware	Ohio
Florida	Oregon
Georgia	Pennsylvania
Idaho	South Carolina
Michigan	Texas
Minnesota	Virginia
Missouri	Wyoming

IV. D. Section 4. Study of Other Persons Ineligible to Purchase Firearms

Section 6213(c) of the Anti-Drug Abuse Act of 1988 requires the Attorney General to conduct a feasibility study to determine whether an effective method can be established for identifying "other persons" ineligible to purchase firearms (that is, other than convicted felons). Such persons include fugitives from justice, those who use or are addicted to illegal drugs, those who have been adjudicated as mentally defective or have been committed to a mental institution, illegal aliens, those dishonorably discharged from the Armed Forces, and those who have

renounced their American citizenship. This study must be submitted to Congress by May 18, 1990.

On behalf of the Task Force the Bureau of Justice Statistics has solicited proposals from outside contractors with the expertise necessary to conduct such a study. The study, scheduled to begin on July 1, 1989, will include the following elements:

- The availability of existing data bases that can be utilized to identify ineligible individuals;
- The quality of these data bases in terms of completeness and accuracy of records;
- The remote accessibility of the data bases through a telecommunications system, particularly, the method and cost of access;
- Legal restrictions on the use of the data and an analysis of the relevant privacy and confidentiality considerations of accessing such data; and
- The feasibility of linking these data bases with a felon identification system.

V. Exhibits

1. Felon identification system for firearm sales: Schematic overview.
2. Option A: Telephone check by gun dealer: Immediate verification.
3. Option A: Secondary verification; Option B: Prior approval.
4. National access to criminal history data.
5. Firearms transaction record, BATF form 4473.
6. Estimated costs for felon identification options.
7. States requiring criminal history checks for firearm sales.
8. Maximum waiting periods required for initial firearm purchase by a State resident.

BILLING CODE 4410-18-M

Felon identification system for firearm sales

Schematic overview

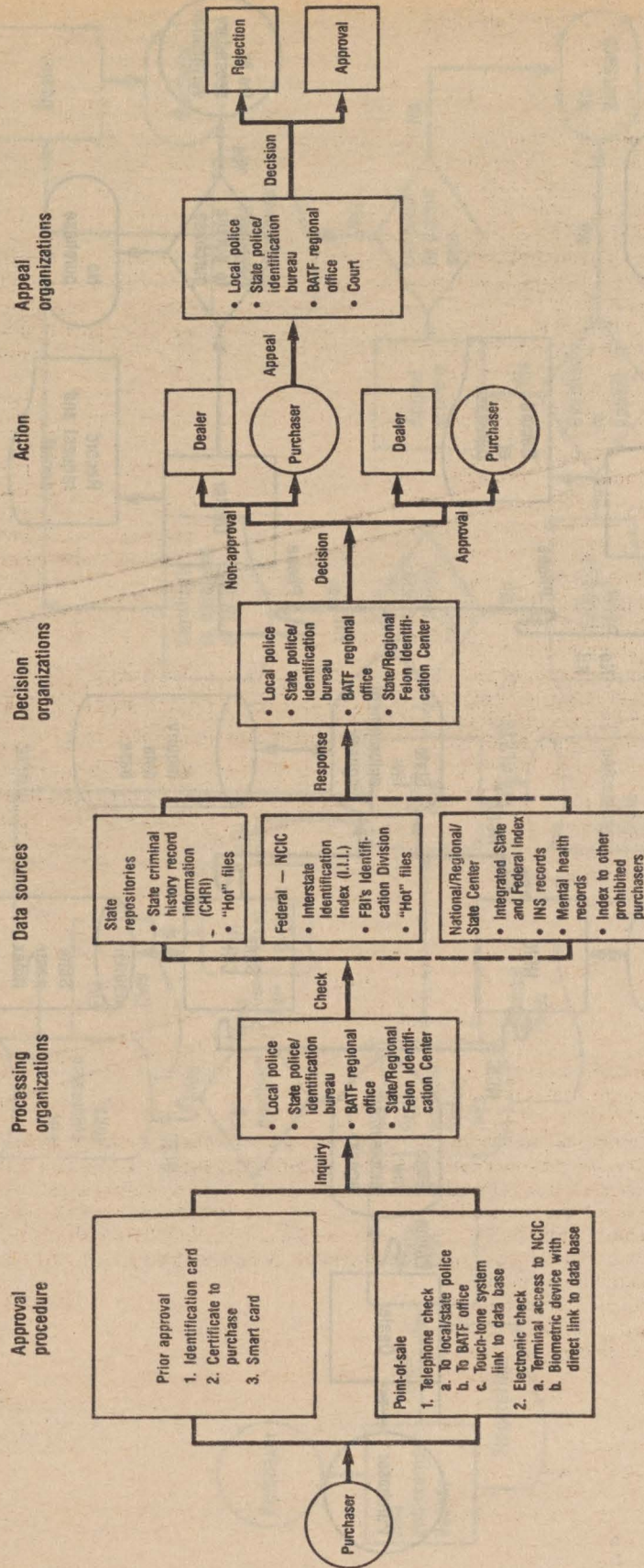
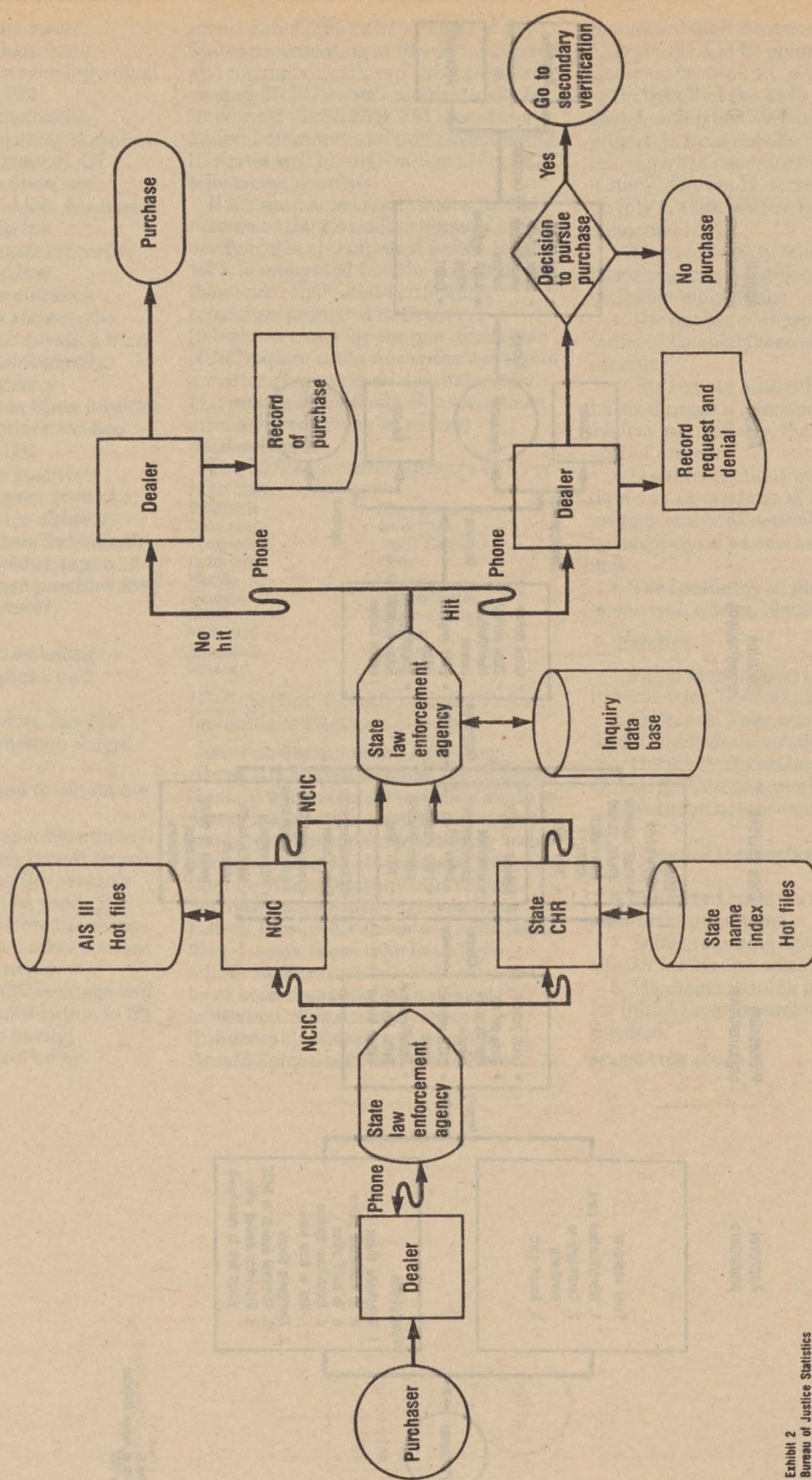


Exhibit 1
Bureau of Justice Statistics
June 1989

Option A: Telephone check by gun dealer Immediate verification



Option A: Secondary verification
Option B: Prior approval

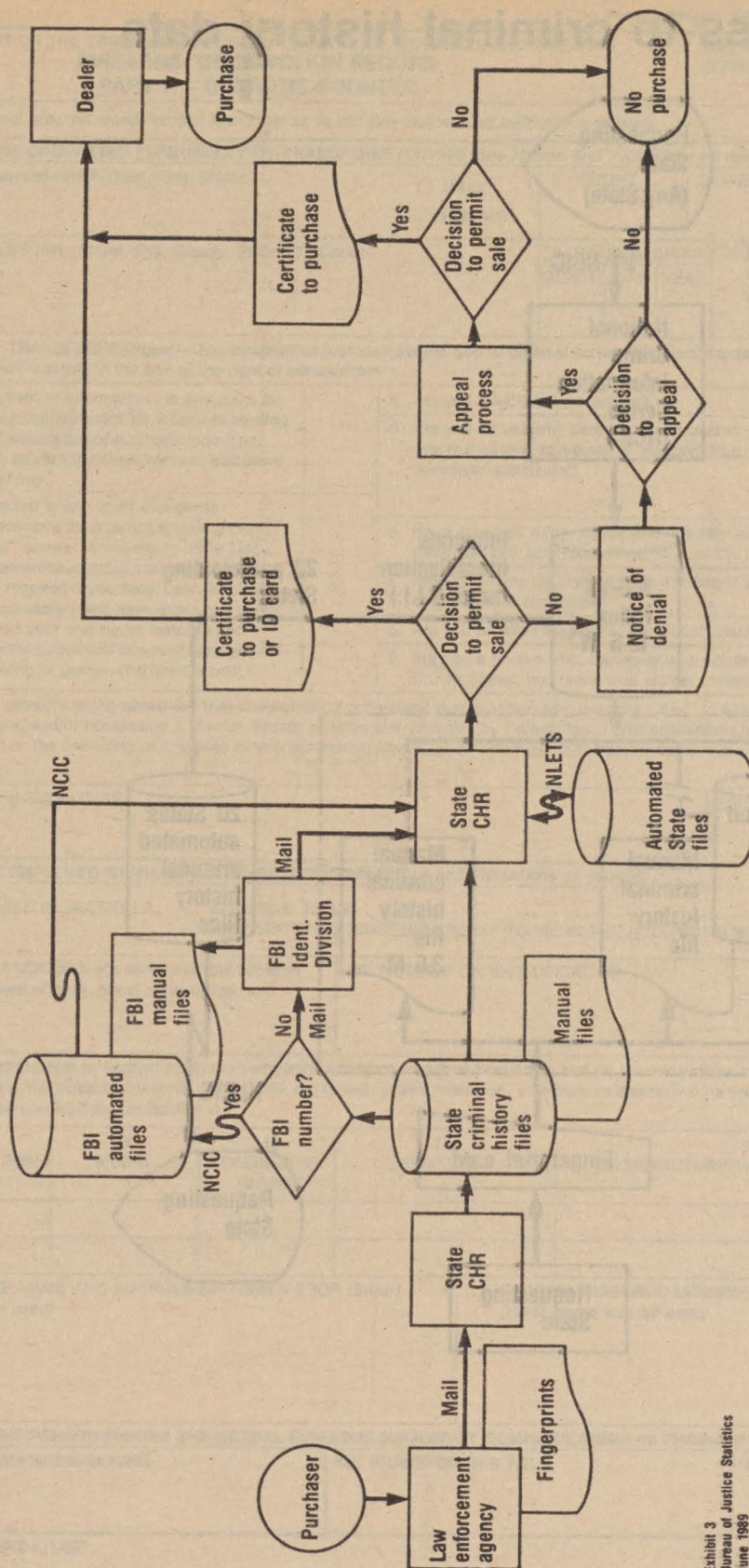


Exhibit 3
Bureau of Justice Statistics
June 1989

National access to criminal history data

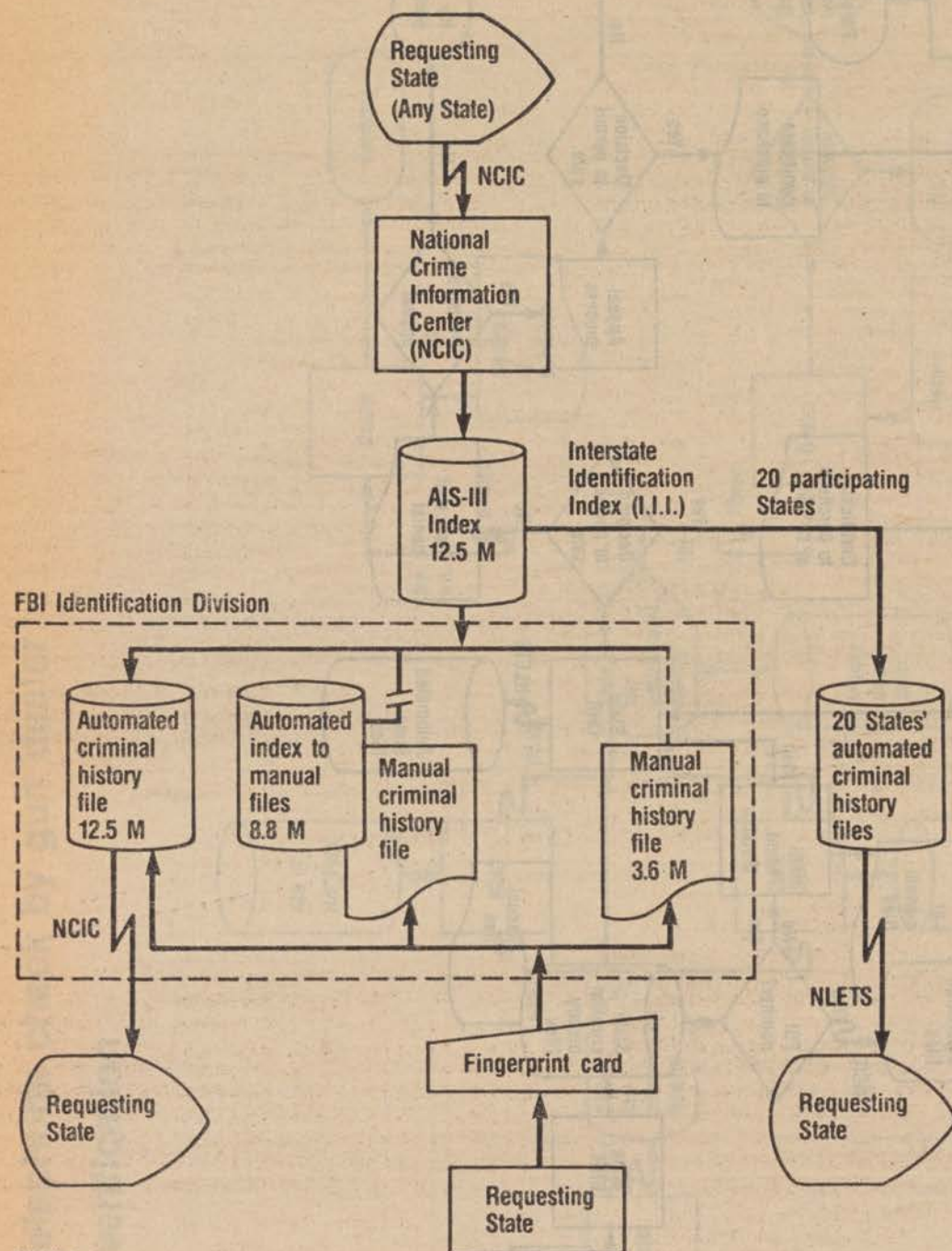


Exhibit 4
Bureau of Justice Statistics
June 1989

Form Approved: OMB No. 1512-0129 (3/31/91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS
FIREARMS TRANSACTION RECORD
PART I — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION
SERIAL NUMBER

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

SECTION A — MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Notices and Instructions on reverse)

1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle)		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	2. HEIGHT	3. WEIGHT	4. RACE
5. RESIDENCE ADDRESS (No., Street, City, County, State, ZIP Code)			6. DATE OF BIRTH MONTH DAY YEAR		7. PLACE OF BIRTH (City and State or City and Foreign Country)
8. CERTIFICATION OF TRANSFEREE (Buyer)—An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:					
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year? <i>"A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury."</i>		c. Are you a fugitive from justice?			
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?			
		e. Have you even been adjudicated mentally defective or have you ever been committed to a mental institution?			
		f. Have you been discharged from the Armed Forces under dishonorable conditions?			
		g. Are you an alien illegally in the United States?			
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship.			

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S (Buyer's) SIGNATURE

DATE

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on reverse)

THIS PERSON DESCRIBED IN SECTION A: ☐ IS KNOWN TO ME
☐ HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION (Driver's license or identification which shows name, date of birth, place of residence, and signature.)	10. NUMBER ON IDENTIFICATION
--	------------------------------

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below and on the back to the person identified in Section A.

11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15. MANUFACTURER (and importer, if any)
1.				
2.				

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)	17. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)
---	--

THE PERSON MAKING THE ACTUAL FIREARMS SALE MUST COMPLETE ITEMS 18 THROUGH 20

18. TRANSFEROR'S (Seller's) SIGNATURE	19. TRANSFEROR'S TITLE	20. TRANSACTION DATE
---------------------------------------	------------------------	----------------------

11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15 MANUFACTURER (and importer, if any)
3.				
4.				
5.				
6.				

Complete ATF F 3310.4 for multiple purchases of handguns (See item 10 below)

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922 and 923.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. WARNING—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearms laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEE (BUYER)

4. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two

persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and

(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

8. Additional firearms purchases made by the same buyer may not be added to this form after the seller has signed and dated it.

9. If more than six firearms are involved, the identification required by Section B, Items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than six weapons may be on a separate sheet of paper which must be attached to the form covering the transaction.

10. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

11. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

12. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part I part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part I are filed in the same manner.

DEFINITIONS

1. Over-the-counter Transaction—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

2. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

3. Under indictment or convicted in any court—An indictment or conviction in any Federal, State or Foreign court.

Form Approved: OMB No. 1512-0490 (3/31/ 91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
FIREARMS TRANSACTION RECORD
PART I — LOW VOLUME — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION
 SERIAL NUMBER

THIS FORM MAY BE USED ONLY BY DEALERS SELLING OR DISPOSING OF 50 OR LESS FIREARMS PER YEAR (See Instructions On Reverse)

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

1. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)		2. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)	
3. FIREARM RECEIVED FROM: a. NON LICENSEE (Name & address) OR b. LICENSEE (Name & License Number)		4. DATE RECEIVED	
5. DESCRIPTION OF FIREARM	MANUFACTURER (and importer, if any)	TYPE (Pistol, Revolver, Rifle, shotgun, etc.)	MODEL
			CALIBER OR GAUGE
			SERIAL NUMBER

SECTION A — MUST BE COMPLETED PERSONALLY BY NONLICENSED TRANSFEREE (BUYER) (See NOTICE, Instructions on Reverse)

6. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle)		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	7. HEIGHT	8. WEIGHT	9. RACE
10. RESIDENCE ADDRESS (No., Street, City, State, ZIP Code)		11. DATE OF BIRTH MONTH DAY YEAR		12. PLACE OF BIRTH (City and State or City and Foreign Country)	
13. CERTIFICATION OF TRANSFEREE (Buyer) — An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:					
a. Are you under indictment or information* in any court for a Crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.		c. Are you a fugitive from justice?			
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		d. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance.			
		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?			
		f. Have you been discharged from the Armed Forces under dishonorable conditions?			
		g. Are you an alien illegally in the United States?			
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?			
I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a felony.					
14. TRANSFEREE'S (Buyer's) SIGNATURE				15. DATE	

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on reverse)

THIS PERSON DESCRIBED IN SECTION A:		<input type="checkbox"/> IS KNOWN TO ME <input type="checkbox"/> HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER
16. TYPE OF IDENTIFICATION (Driver's license or identification which shows name, date of birth, place of residence, and signature)	17. NUMBER ON IDENTIFICATION	

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described to the person identified in Section A.

18. TRANSFEROR'S (Seller's) SIGNATURE	19. DATE
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SECTION C — TO BE COMPLETED WHEN THE TRANSFEREE (BUYER) IS A FEDERAL FIREARMS LICENSEE (INCLUDES NON OVER THE COUNTER)

20. ENTER FFL'S NAME AND LICENSE NUMBER	21. TRANSFEROR'S (Seller's) SIGNATURE	22. DATE
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NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922, 923, and 928.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

- Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.
- WARNING**—the sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or "straw purchaser" for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.
- The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his/her citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State instead of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

- The nonlicensed transferee (buyer) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.
- When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating:
 - that the firearm is being acquired for the use of and will be the property of that business entity, and
 - the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

- Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.
- The transferor (seller) of a firearm will, in every instance where Section A is completed, complete Section B of the form.
- The transferor (seller) of a firearm will, in every instance, complete Section C of the form if disposing of a firearm to a transferee (buyer) who is a Federal Firearms Licensee. (Applies to both over the counter and non over the counter transactions between licensed dealers.)
- In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.
- The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178, in determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.
- Each transferor (seller) maintaining firearms acquisition and disposition records pursuant to 27 CFR 178.124a (Low Volume Dealers) shall retain form 4473-LV, Part I and II, reflecting firearms possessed by such business in chronological (by date of receipt) or numerical (by transaction serial number) order. Forms 4473-LV, Part I and II, reflecting the transferor's sale or disposition of firearms shall be retained in alphabetical (by name of purchaser), chronological (by date of disposition) or numerical (by transaction serial number) order.

DEFINITIONS

- Low volume dealer**—A licensed dealer contemplating the disposition of not more than 50 firearms within the succeeding 12-month period. Such 12-month period commences from the date the licensed dealer first records the purchase or acquisition of a firearm on the reverse side of this form. If during the course of the 12 month period, dispositions exceed the 50 firearm limitation, the licensed dealer should begin keeping standard records required in 27 CFR 178 for non low volume dealers.
- Over-the-counter Transaction**—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.
- Published Ordinances**—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.
- Under indictment or convicted in any court**—An indictment or conviction in any Federal, State or Foreign court.

Form Approved: OMB No. 1512-0130 (02/29/91)

DEPARTMENT OF THE TREASURY—BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS			TRANSFEROR'S TRANSACTION SERIAL NUMBER	
FIREARMS TRANSACTION RECORD				
PART II—NON-OVER-THE-COUNTER				
NOTE: Prepare in duplicate. All entries on this form must be in ink. See Notices and Instructions on back.				
SECTION A—MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Notices and Instructions on reverse)				
1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle)		2. HEIGHT	3. WEIGHT	4. RACE
<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE				
5. RESIDENCE ADDRESS (No., Street, City, County State, ZIP Code)		6. DATE OF BIRTH		7. PLACE OF BIRTH (City and State or City and Foreign Country)
		MONTH	DAY	YEAR
8. CERTIFICATION OF TRANSFEREE (Buyer)—An Untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:				
a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.		c. Are you a fugitive from justice?		
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?		
		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?		
		f. Have you been discharged from the Armed Forces under dishonorable conditions?		
		g. Are you an alien illegally in the United States?		
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?		
Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am 21 years or more of age, or that, in the case of a shotgun or rifle, I am 18 years or more of age; that I am not prohibited by the provisions of Chapter 44 of Title 18, United States Code, from receiving a firearm in interstate or foreign commerce, and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are:				
TITLE		NAME		
ADDRESS				
I also hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.				
TRANSFEREE'S (Buyer's) SIGNATURE			DATE	
SECTION B—MUST BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on reverse)				
On the basis of (1) the statements in Section A; (2) my notification of the chief law enforcement officer designated above; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm described below to the person identified in Section A.				
9. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	10. MODEL	11. CALIBER OR GAUGE	12. SERIAL NO.	
13. MANUFACTURER (and importer, if any)				
14. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)			15. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)	
16. TRANSFEROR'S (Seller's) SIGNATURE		17. TRANSFEROR'S TITLE		18. TRANSACTION DATE

ATF F 4473 (5300.9) PART II (1-88)

Exhibit 5.5

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PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEE (BUYER)

1. Under 18 U.S.C. 921-929, firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. Warning—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEE (BUYER)

1. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

2. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating

- (a) that the firearm is being acquired for the use of and will be the property of that business entity, and
- (b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

1. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

2. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

3. If more than one firearm is involved, the identification required by Section B, Items 9 through 13, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than one weapon may be on a separate sheet of paper which must be attached to the form covering the transaction.

4. The transferor (seller) of a firearm in an intrastate non-over-the-counter transaction must forward by registered or certified mail (return receipt requested) the copy of the form to the chief law enforcement officer of the transferee's (buyer's) locality of residence. The transferor must delay shipment or delivery of the firearm for a period of at least 7 days following receipt of the post office notification on the acceptance or non-acceptance of the envelope. The transferor will retain as a part of the records required to be kept by 18 U.S.C. 921-929 the original form with evidence of the receipt or rejection of the notification forwarded to the chief law enforcement officer of the transferee's locality of residence.

5. The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929, and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178.

6. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part II part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part II are filed in the same manner.

NOTICE TO LAW ENFORCEMENT OFFICIALS

This copy of ATF Form 4473, Part II, is to advise you of a firearms transaction involving a resident in your jurisdictional area. The firearm described in Section B will not be shipped or delivered to the transferee (buyer) identified in Section A for a period of at least seven days following receipt of the notification of your acceptance or refusal of delivery, by registered or certified mail, of the form.

DEFINITIONS

1. Non-over-the-Counter Transaction—A mail-order transaction, or other transaction, where the transferee (buyer) does not appear in person at the transferor's (seller's) premises.

2. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

ATF F 4473 (5300.9) PART II (1-88)

Exhibit 6. Estimated costs for felon identification options
(in millions of dollars)

Options	Total	Federal Government	State and local government	Gun dealer
Startup costs				
Options				
A. Telephone check by gun dealer and secondary verification	\$ 36-44	\$ 13-17	\$ 23-26	---
A3. Live scan of fingerprints by dealer ^a				
(1) All dealers	9,590-27,144	47-51	93	9,450-27,000
(2) Commercial dealers only ^b	3,457-9,636	40-44	92	3,325-9,500
A4. Biometric identification card ^c				
(1) All dealers	198-368	13-17	23-26	162-324
(2) Commercial dealers only ^b	93-158	13-17	23-26	57-114
B. Prior approval — FOID card	148-153	77-81	72	*
B1. Live scan by law enforcement and biometric check by dealer ^a				
(1) All dealers	344-572	77-81	105-167	162-324
(2) Commercial dealers only ^d	239-362	77-81	105-167	57-114
Annual operating costs				
Options				
A. Telephone check by gun dealer and secondary verification	\$ 53-70	\$ 13-18	\$ 40-53	---
A3. Live scan of fingerprints by dealer ^a				
(1) All dealers	3,047-8,347	104-109	108-138	2,835-8,100
(2) Commercial dealers only ^b	1,172-3,063	86-91	98-122	988-2,850
A4. Biometric identification card ^c				
(1) All dealers	102-168	13-18	40-53	49-97
(2) Commercial dealers only ^b	70-105	13-18	40-53	17-34
B. Prior approval — FOID card	136-161	65-70	71-91	*
B1. Live scan by law enforcement and biometric check by dealer ^a				
(1) All dealers	203-295	65-70	89-128	49-97
(2) Commercial dealers only ^d	171-232	65-70	89-128	17-34

Note: Detail may not add to total because of rounding

--- Unknown

* Negligible

^a Partial estimates only.

^b Assumes that the non-commercial dealers (an estimated 65% of all dealers) would use the basic option A.

^c Excludes all costs of producing and distributing the biometric cards.

^d Assumes that the non-commercial dealers (65% of all dealers) would use basic option B.

Exhibit 7. States requiring criminal history checks for firearm sales

States requiring criminal history checks	Type of firearm	Application required for--	Special requirements	Agency conducting checks	Highest level files examined
Prior to sale:					
Alabama	handguns	purchase		local	State
California	handguns	purchase		State	national
Connecticut	handguns	purchase		local, State	State
District of Columbia	all guns*	registration certificate	fingerprints gun law exam	local	national
Hawaii	long guns, handguns	permit (1 year) permit (each sale)	fingerprints	local	national
Illinois	all guns	ID card (5 years)		State	national
Indiana	handguns	license (4 years)	fingerprints	local, State	State
Iowa	handguns	permit (1 year)	fingerprints	local, State	national
Maryland	handguns	purchase		State	national
Massachusetts	all guns	ID card		local, State	national
Minnesota	handguns	permit (1 year)		local	national
Missouri	handguns	permit (each sale)			local State
New Jersey	long guns handguns	ID card permit (each sale)	fingerprints	State	national
New York	handguns	permit	fingerprints safety course	State	national
North Carolina	handguns	permit (each sale)			local State
Oregon	handguns	purchase		local	national
Pennsylvania	handguns	purchase		local, State ^b	State
Rhode Island	handguns	purchase	safety course	local, State	State
South Dakota	handguns	purchase		local	State
Tennessee	handguns	purchase	thumbprint	local	national
Washington	handguns	purchase		local	national
Only after sale:					
Michigan	handguns	license (each sale)	safety inspection	local	national
South Carolina	handguns	purchase		State	State

* Only preregistered handguns are allowed in the District of Columbia.

No new handguns may be brought into the city.

^b Criminal history check conducted by the local agency before the sale and by the State agency after the sale.

Exhibit 8. Maximum Waiting Periods Required for Initial Firearm Purchase by a State Resident

Handguns

180 days New York
60 days Indiana
40 days Massachusetts
30 days Illinois
New Jersey
North Carolina
15 days California

Hawaii
Tennessee
14 days Connecticut
9 days Missouri
7 days Maryland
Minnesota
5 days Oregon
Washington
3 days Iowa
Rhode Island
South Dakota
2 days Alabama

Pennsylvania
Wisconsin

Long Guns

60 days District of Columbia
40 days Massachusetts
30 days Illinois
New Jersey
15 days Hawaii

[FR Doc. 89-15002 Filed 6-23-89; 8:45 am]

BILLING CODE 4410-18-M

Reader Aids

Federal Register

Vol. 54, No. 121

Monday, June 26, 1989

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LIST OF PUBLIC LAWS

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H.R. 932/Pub. L. 101-41

Puyallup Tribe of Indians Settlement Act of 1989. (June 21, 1989; 103 Stat. 83; 8 pages) Price: \$1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

³ No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

⁵ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁶ No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

⁷ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

